

No. 12761

United States
Court of Appeals
for the Ninth Circuit.

see vol. — 12669
JACK BORCICH, ANDREW VILICICH and
BORTUL ZANKICH, Co-Owners of the Oil
Screw Marsha Ann,

Appellants,

vs.

JOSEPH ANCICH, JOHN KAIZA, ANTON
BOGDANOVICH, PETER SVORINICH,
MARTIN MISKULIAN, RAY ZUKOWSKI,
WILLIAM T. DECKER, GEORGE KOR-
GAN, SAM BILAS, W. H. HOOPES, NICK
MILOSEVICH, GEORGE KORGAN and
SAM BILAS,

Appellees.

Apostles on Appeal
In Two Volumes

Volume I
(Pages 1 to 318)

Appeal from the United States District Court,
Southern District of California,
Central Division.

FILED
MAY 7 1951
PAUL P. O'BRIEN,
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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For Appellees George Korgan, et al.:

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For Appellees W. H. Hoopes, et al.:

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San Pedro, Calif.

In the United States District Court, Southern
District of California, Central Division
In Admiralty—No. 8,960-W

JOSEPH ANCICH, JOHN KAIZA, ANTON
BOGDANOVICH, PETER SVORINICH,
MARTIN MISKULIAN, RAY ZUKOWSKI
and WILLIAM T. DECKER,

Libelants,

vs.

D/S “MARSHA ANN,” Her Engines, Tackle,
Apparel, Furniture, etc., and JACK BOR-
CICH, FIRST DOE and SECOND DOE, Her
Owners,

Respondents.

LIBEL IN REM AND IN PERSONAM FOR
DAMAGES, WAGES AND MAINTENANCE

To the Honorable Judges of the United States Dis-
trict Court, Southern District of California,
Central Division:

The libel of Joseph Ancich, late a seaman fisher-
man aboard the D/S “Bear,” in a cause of damage,
wages and maintenance, civil and maritime, against
the D/S “Marsha Ann,” her engines, tackle, ap-
parel, furniture, etc., and Jack Borcich, First Doe
and Second Doe, her owners, respectfully shows:

First: That libelant is a seaman, within the
designation of persons permitted to sue herein with-
out furnishing bond for or prepayment of, or mak-

ing deposit to secure fees and costs for the purpose of entering in and prosecuting suits conformable to the provisions of Title 28, Sec. 837, U.S.C.A.

Second: That the D/S "Marsha Ann" is an American fishing vessel and is now or will be during pendency of process herein within the territorial jurisdiction of the above-entitled Court and within the admiralty and maritime jurisdiction of the United States.

Third: That libelant herein was a member of the crew of the D/S "Bear" and employed thereon on a lay or share basis for the sardine fishing season in 1948, which terminates on or about the 1st day of March, 1949.

Fourth: That at about eleven-thirty a.m. on the 30th day of November, 1948, the D/S "Bear" was bound for the port of Los Angeles approximately two miles southeast of the southerly end of the San Pedro breakwater, proceeding on a course of approximately 295 degrees at approximately one knot per hour in a dense fog, sounding fog signals in precise compliance with International Rules, Article 15 A. That at said time and place, the D/S "Marsha Ann" was proceeding upon a course of approximately 205 degrees at a speed in excess of moderate, and not having careful regard to the existing circumstances and conditions. That while the said D/S "Marsha Ann" was proceeding at such speed as aforesaid, she collided in the starboard midship of the D/S "Bear," damaging the

D/S "Bear" to such an extent that repair of said vessel cannot reasonably be completed in a period less than approximately two months.

Fifth: That said collision was caused through the negligence and fault of the D/S "Marsha Ann" and those in charge of her in the following respects, among others, which will more particularly be pointed out at the trial of this action: 1. Those in charge of the D/S "Marsha Ann" were not proceeding at a moderate speed, having careful regard to the existing circumstances and conditions. 2. That those in charge of the D/S "Marsha Ann" did not stop her engines and then navigate with caution until the danger of collision was over when they became aware of the presence of the D/S "Bear" as revealed by the radar aboard the D/S "Marsha Ann." 3. Those in charge of the D/S "Marsha Ann" were improperly navigating at dangerous and reckless speed under conditions requiring cautious navigation.

Sixth: That libelant is entitled to recover from respondent his damages in the loss of wages in not being able to continue his employment aboard the D/S "Bear" for approximately two months. That by reason of these premises, libelant is damaged in the sum of \$1,500.00, or as will more fully be shown at the time of trial herein.

Seventh: That libelant is entitled to recover from respondents his maintenance during the period

of time he is unable to continue his employment aboard the D/S "Bear" by reason of the aforesaid collision. That the reasonable value of libelant's maintenance is the sum of \$5.00 per day, and that by reason of the aforesaid premises, libelant is entitled to recover the sum of \$300.00 for his maintenance.

Eighth: That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

For a Second Cause of Action against respondents, libelant John Kaiza alleges:

Ninth: Libelant John Kaiza incorporates herein and makes a part hereof Articles First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth of the first cause of action herein as if the same were fully set forth hereunder.

For a Third Cause of Action against respondents, libelant Anton Bogdanovich alleges:

Tenth: Libelant Anton Bogdanovich incorporates herein and makes a part hereof Articles First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth of the first cause of action herein as if the same were fully set forth hereunder.

For a Fourth Cause of Action against respondents libelant Peter Svorinich alleges:

Eleventh: Libelant Peter Svorinich incorporates herein and makes a part hereof Articles First, Sec-

ond, Third, Fourth, Fifth, Sixth, Seventh and Eighth of the first cause of action herein as if the same were fully set forth hereunder.

For a Fifth Cause of Action against respondents libelant Martin Miskulian alleges:

Twelfth: Libelant Martin Miskulian incorporates herein and makes a part hereof Articles First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth of the first cause of action herein as if the same were fully set forth hereunder.

For a Sixth Cause of Action against respondents libelant Ray Zukowski alleges:

Thirteenth: Libelant Ray Zukowski incorporates herein and makes a part hereof Articles First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth of the first cause of action herein as if the same were fully set forth hereunder.

For a Seventh Cause of Action against respondents libelant William T. Decker alleges:

Fourteenth: Libelant William T. Decker incorporates herein and makes a part hereof Articles First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth of the first cause of action herein as if the same were fully set forth hereunder.

Wherefore, libelants Joseph Ancich, John Kaiza, Anton Bogdanovich, Peter Svorinich, Martin Miskulian, Ray Zukowski and William T. Decker, pray that process in due form of law may issue against the D/S "Marsha Ann," her engines, tackle, ap-

parel, furniture, etc., and all persons having or claiming any interest therein may be cited to appear and answer in the premises; that citation in due form of law may issue against the respondents, Jack Borcich, First Doe and Second Doe, citing them to appear and answer in the premises, and that this Court will decree the payment by said respondents to the libelants as follows: to Joseph Ancich, the sum of \$1,800.00; to John Kaiza, the sum of \$1,800.00; to Anton Bogdanovich, the sum of \$1,800.00; to Peter Svorinich, the sum of \$1,800.00; to Martin Miskulian, the sum of \$1,800.00; to Ray Zukowski, the sum of \$1,800.00; and to William T. Decker, the sum of \$1,800.00.

That said D/S “Marsha Ann” may be condemned and sold to pay the same, together with interest and costs, and that said libelants may have such other and further relief as may be just and proper.

/s/ DAVID A. FALL,
Proctor for Libelants.

State of California,
County of Los Angeles—ss.

Joseph Ancich, being by me first duly sworn, deposes and says: that he is the Libelant in the above-entitled action; that he has read the foregoing Libel and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information and belief, and as to those matters that he believes it to be true.

Joseph Ancich makes the verification for all libelants herein for the reason that all facts stated in the libel are within his knowledge.

/s/ JOSEPH ANCICH.

Subscribed and sworn to before me this 8th day of December, 1948.

[Seal] /s/ DAVID A. FALL,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Dec. 9, 1948.

[Title of District Court and Cause.]

CLAIM OF JACK BORCICH, et al.

Now, Before This Honorable Court, Appear Jack Borcich, Andrew Vilicich and Bortul Zankich, co-owners of the D/S "Marsha Ann," her engines, tackle, apparel, furniture, etc., by said Jack Borcich, and make claim to the said vessel, etc., and aver that they are the true and bona fide owners of said vessel, etc., and that no other person is the owner thereof.

Wherefore, they pray to defend this suit accordingly.

JACK BORCICH,
ANDREW VILICICH and
BORTUL ZANKICH,

By /s/ JACK BORCICH.

State of California,
County of Los Angeles—ss.

Jack Borcich, being first duly sworn, deposes and says:

That Jack Borcich, Andrew Vilicich and Bortul Zankich are the true and bona fide owners of the fishing vessel "Marsha Ann," her engines, tackle, apparel, furniture, etc., against which suit has been commenced by Joseph Ancich, et al., libelants; that at the time of the commencement of said suit the said fishing vessel "Marsha Ann," her engines, tackle, apparel, furniture, etc., was in the lawful possession of said owners; that deponent is one of said owners and is duly authorized by the others of said owners to make this claim.

/s/ JACK BORCICH.

Subscribed and sworn to before me this 11th day of December, 1948.

[Seal] /s/ ELIZABETH P. WILLIAMS,
Notary Public in and for
Said County and State.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Dec. 15, 1948.

In the District Court of the United States, South-
ern District of California, Central Division
In Admiralty—Case No. 8,960-W

JOSEPH ANCICH, et al.,

Libelants,

vs.

D/S MARSHA ANN, Her Engines, Tackle, Ap-
parel, Furniture, etc., and JACK BORCICH,
FIRST DOE and SECOND DOE, Her Owners,

Respondents.

GEORGE KORGAN and SAM BILAS,

Intervening Libelants,

vs.

Oil Screw MARSHA ANN, Her Engines, Tackle,
Apparel, Furniture, etc., and JACK BOR-
CICH, ANDREW VILICICH, BORTUL
ZANKICH, DOE I, DOE II and DOE III,

Respondents.

INTERVENING LIBEL IN REM AND IN
PERSONAM FOR COLLISION DAMAGES

To the Honorable, the Judges of the District Court
of the United States, for the Southern District
of California, Sitting in Admiralty:

The intervening libel of George Korgan and Sam
Bilas, against the Oil Screw Marsha Ann, her en-
gines, tackle, apparel, furniture, etc., and against

all persons intervening for their interests therein, and against Jack Borcich, Andrew Vilicich, Bortul Zankich, Doe I, Doe II and Doe III, in a cause of collision, civil and maritime, alleges:

I.

That at all times hereinafter mentioned these intervening libelants were, and now are, the sole and only owners of the Oil Screw Bear, a fishing vessel.

II.

Intervening libelants herein are informed and believe, and upon such information and belief allege, that the Oil Screw Marsha Ann is now, or during the pendency of process herein will be, within this district and within the jurisdiction of this Honorable Court.

III.

Intervenng libelants herein are informed and believe and upon such information and belief allege that respondents Jack Borcich, Andrew Vilicich, Bortul Zankich, Doe I, Doe II and Doe III at all times hereinafter mentioned were, and now are, the owners and operators of said Oil Screw Marsha Ann, a fishing vessel. The true names of respondents Doe I, Doe II and Doe III, are unknown to intervening libelants herein, and when their true names are ascertained, intervening libelants will ask leave of court to amend this intervening libel to set forth the true names of said respondents in lieu of said fictitious names.

IV.

Intervening libelants herein are informed and believe, and upon such information and belief allege, that on or about November 30, 1948, at about 11:30 o'clock (Pacific Daylight Time), in the morning of said day, a collision occurred between the Oil Screw Bear and the Oil Screw Marsha Ann about 2½ miles southeast of the Los Angeles Harbor Breakwater Light, as a result of which collision said Oil Screw Bear was damaged, as more particularly hereinafter alleged.

V.

Intervening libelants herein are informed and believe, and upon such information and belief, allege that the circumstances of said collision were as follows: the Bear was proceeding at a speed of about 1½ miles per hour in a general northwesterly direction toward and about 2½ miles southeast of the Los Angeles Harbor Breakwater Light. A heavy fog was laying off the coast in this vicinity, enveloping the movements of vessels in the area. At the time of the collision and for more than an hour preceding the same, the Bear was sounding fog signals in compliance with the applicable Rules of the Road. Whistles of other vesesls were heard in the vicinity of the Bear, as a result of which the Bear alternately stopped and then proceeded with caution at a speed of approximately 1½ miles per hour. While so navigating, the Marsha Ann suddenly appeared, proceeding at an excessive speed, broad on the starboard beam of the Bear at a distance of about 40 feet. Before any steps could be

taken to avert or minimize the collision, the Marsha Ann struck the Bear at almost a right angle on the starboard side of the Bear just abaft the deck house, at which time the Bear was virtually dead in the water. At all times herein mentioned the Bear was in all respects seaworthy and properly equipped and supplied and manned by competent master and crew, and was well and carefully navigated in accordance with the applicable Rules of the Road then and there pertinent.

VI.

Intervening libelants herein are informed and believe, and upon such information and belief allege, that said Oil Screw Bear committed no fault and was guilty of no negligence in the premises, and said collision and damage to said Oil Screw Bear were solely due to the carelessness, negligence and recklessness of said Oil Screw Marsha Ann and respondents, and their agents and servants, in the following respects:

1. The Marsha Ann did not have on watch proper and competent persons attentive to their duties;

2. The Marsha Ann did not have on watch proper and competent lookouts, properly stationed and attentive to their duties;

3. The Marsha Ann did not have a proper and competent helmsman properly stationed and attentive to his duties;

4. The Marsha Ann failed to sound proper whistle signals;

5. The Marsha Ann was navigated at an excessive speed in an erratic and reckless manner in fog and in neglect of the care required in the circumstances by the ordinary precautions of good seamanship, although she was required to exercise such precautions by the rules of navigation applicable in the circumstances;

6. The Marsha Ann failed to give due regard to the dangers of navigation and collision, and particularly the danger of collision with the Bear, although she was required to do so by the rules of navigation applicable in the circumstances;

7. The Marsha Ann, prior to the collision, having observed on her radar screen the presence of the Bear in a position forward of the bow of the Marsha Ann, when the danger of collision was apparent, failed and neglected to stop or reverse her engines and then navigate with caution, until the danger of collision was over;

8. The Marsha Ann was negligent in other and further particulars than those hereinabove set forth, of which intervening libelants are not presently advised, but as to which these intervening libelants beg leave to offer proof when and as advised and amend this intervening libel accordingly.

VII.

By reason of said collision and said damage to said Oil Screw Bear, these intervening libelants

have sustained damages in the amount of \$20,000 for the reasonable costs of repair to said vessel.

VIII.

All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, your intervenors pray:

1. That they and each of them may be permitted to intervene according to the course and practice of admiralty and maritime jurisdiction in the proceedings in rem and in personam herein.

2. That process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against said Oil Screw Marsha Ann, her engines, tackle, apparel, furniture, etc., and that all persons having any interest therein may be cited to appear and answer under oath all and singular the matters aforesaid.

3. That citation in personam may issue against said respondents and each of them and that they be required to appear and answer under oath all and singular the matters aforesaid.

4. That this Honorable Court be pleased to decree the payment by respondents, and each of them, of the damages aforesaid together with interest thereon and costs of suit herein; and that said Oil Screw Marsha Ann may be condemned and sold to pay the amounts due to these intervening libelants; and that said claims be paid from the proceeds of

the sale of said vessel, if sufficient in amount, and for judgment in personam against said individual respondents.

5. That these intervening libelants have such other and further relief in the premises as they may be entitled to receive.

LILLICK, GEARY & McHOSE,
WILLIAM A. C. ROETHKE,

By /s/ WILLIAM A. C. ROETHKE,
Proctors for Intervening Libelants, George Korgan
and Sam Bilas.

Good cause appearing therefor, It Is Hereby Ordered that the foregoing Intervening Libel in Rem and in Personam for collision damage be allowed and filed herein and that intervenors George Korgan and Sam Bilas be entitled to participate fully in all further proceedings herein.

Dated: Los Angeles, California, this 27th day of December, 1948.

/s/ PAUL J. McCORMICK,
United States District Judge.

State of California,
County of Los Angeles—ss.

George Korgan, being by me first duly sworn, deposes and says:

That he is one of the intervening libelants in the above-entitled action; that he has read the foregoing intervening libel and knows the contents thereof and that the same is true of his own knowledge except

as to the matters which are therein set forth upon his information and belief and as to those matters that he believes them to be true.

/s/ GEO. KORGAN.

Subscribed and sworn to before me this 24th day of December, 1948.

[Seal] /s/ BERTHA E. BRASACK,
Notary Public in and for
Said County and State.

My Commission Expires August 18, 1950.

[Endorsed]: Filed Dec. 27, 1948.

[Title of District Court and Cause.]

CLAIM OF JACK BORCICH, ET AL.

Now, Before This Honorable Court, Appear Jack Borcich, Andrew Vilicich and Bortul Zankich, co-owners of the Oil Screw "Marsha Ann," her engines, tackle, apparel, furniture, etc., by said Jack Borcich, and make claim to the said vessel, etc., and aver that they are the true and bona fide owners of said vessel, etc., and that no other person is the owner thereof.

Wherefore, they pray to defend said suit accordingly.

JACK BORCICH,
ANDREW VILICICH, and
BORTUL ZANKICH,

By /s/ JACK BORCICH.

State of California,
County of Los Angeles—ss.

Jack Borcich, being first duly sworn, deposes and says:

That Jack Borcich, Andrew Vilicich and Bortul Zankich are the true and bona fide owners of the fishing vessel "Marsha Ann," her engines, tackle, apparel, furniture, etc., against which suit has been commenced by George Korgan and Sam Bilas, intervening libelants; that at the time of the commencement of said suit the said fishing vessel "Marsha Ann," her engines, tackle, apparel, furniture, etc., was in the lawful possession of said owners; that deponent is one of said owners and is duly authorized by the others of said owners to make this claim.

/s/ JACK BORCICH.

Subscribed and sworn to before me this 28th day of December, 1948.

[Seal] /s/ ELIZABETH P. WILLIAMS,
Notary Public in and for
Said County and State.

Receipt of Copy acknowledged.

[Endorsed]: Filed Dec. 28, 1948.

[Title of District Court and Cause.]

ANSWER TO LIBEL

To the Honorable, the Judges of the Above-Entitled Court:

The answer of Jack Borcich, Andrew Vilicich and Bortul Zankich, co-owners of the fishing vessel Marsha Ann, her engines, tackle, apparel and furniture, to the libel herein of Joseph Ancich, John Kaiza, Anton Bogdanovich, Peter Svorinich, Martin Miskulian, Ray Zukowski and William T. Decker, admit, deny and allege:

I.

Respondents allege that they have no knowledge, information or belief sufficient to answer the allegations of Article First of the said libel, and on that ground deny each any every, all and singular, generally and specifically the allegations of the said Article First.

II.

Respondents admit the allegations of Article Second of the libel.

III.

Respondents allege that they have no knowledge, information or belief sufficient to answer the allegations of Article Third of said libel, and on that ground deny that libelant was a member of the crew of the D/S "Bear" and/or was employed thereon, whether on the terms and/or for the time alleged or otherwise, or at all.

IV.

Answering the allegations of Article Fourth of the said libel respondents deny each and every, all and singular, generally and specifically the allegations of said Article Fourth, except as hereinbelow expressly alleged or admitted; further answering said Article Fourth these respondents deny that the D/S "Marsha Ann" collided with the D/S "Bear," or that the D/S "Bear" was damaged as alleged in said Article, or otherwise, or at all, whether to the extent alleged in said Article Fourth or to any extent, or at all.

Respondents allege that the circumstances and happenings on the date specified in the said Article Fourth were as follows:

On or about the 30th day of November, 1948, between 11:00 and 11:30 a.m. the D/S "Marsha Ann" was proceeding outward through the breakwater of San Pedro Bay in a heavy fog; visibility was limited to 10-15 feet; the speed of the "Marsha Ann" was not more than two knots; fog signals, as prescribed by the International Rules of the Road at Sea, were being given by the "Marsha Ann"; when the said "Marsha Ann" was about 200 yards outside of the said breakwater and southeast of the Los Angeles Harbor Light, its radar operator notified Captain Jack Borcich that the radar screen indicated that three vessels, one to the starboard and two to the port, were heading for the entrance to the breakwater; Captain Borcich immediately disengaged the engine to let these boats enter the breakwater safely.

The "Marsha Ann" had been stopped for four or five minutes, having no way upon her, when the lookout in the bow of the "Marsha Ann" called attention to a vessel (the D/S "Bear") approximately twenty feet off the port bow of the "Marsha Ann"; Captain Borcich immediately sounded the danger signals, as prescribed by the International Rules of the Road at Sea; the "Bear" was moving at a speed greatly in excess of moderate, on a course which would have scarcely cleared the bow of the "Marsha Ann," when suddenly the "Bear" made a turn hard to port, swinging its stern toward the "Marsha Ann" in such a manner as to cause the starboard beam of the "Bear" to strike the stem of the "Marsha Ann."

Respondents further allege that at all times herein mentioned the "Marsha Ann" was in all respects seaworthy, properly equipped, supplied and manned by a competent master and crew and was well, carefully and prudently navigated in accordance with the applicable International Rules of the Road at Sea.

V.

Answering the allegations of Article Fifth respondents deny each, every, all and singular, generally and specifically, the allegations therein contained; further answering said Article Fifth these respondents deny that the alleged accident, or damage, or either or any thereof, was caused or occasioned, or in any manner contributed to by the said, or any, negligence, fault or liability on the part of these respondents, their agents or employees,

or either or any of them, whether in the respects alleged in the said Article or otherwise, or at all.

In this connection, respondents allege that the "Marsha Ann" was guilty of no negligence and/or fault in the premises. Respondents are informed and believe and therefore allege that said collision and alleged damage to the D/S "Bear," if any, were due solely to the recklessness, carelessness, negligence and fault of the said "Bear," its Captain and crew in the following respects:

1. The "Bear" did not have on watch proper and competent persons attentive to their duties;
2. The "Bear" did not have on watch proper and competent lookouts, properly stationed and attentive to their duties;
3. The "Bear" did not have a proper and competent helmsman properly stationed and attentive to his duties;
4. The "Bear" failed to sound proper whistle signals;
5. The "Bear" was navigated at an excessive speed in an erratic and reckless manner in fog and in neglect of the care required in the circumstances by the ordinary precautions of good seamanship, although she was required to exercise such precautions by the rules of navigation applicable in the circumstances;
6. The "Bear" failed to give due regard to the dangers of navigation and collision, and particu-

larly the danger of collision with the "Marsha Ann," although she was required to do so by the rules of navigation applicable in the circumstances;

7. The "Bear" was negligent in other and further particulars than those hereinabove set forth, of which respondents are not presently advised, but as to which these respondents beg leave to offer proof when and as advised and amend this answer accordingly.

VI.

Answering the allegations of Article Sixth of the libel, respondents deny each and every, all and singular, generally and specifically the allegations of said Article Sixth and deny that any damage was sustained by libelant, either as alleged in said Article, or otherwise, or at all; and deny that libelant was damaged in the sum alleged in the said Article Sixth, or in any other sum, or at all, whether for the reasons alleged in said Article Sixth or for any other reason, or at all.

VII.

Answering the allegations of Article Seventh of the libel, respondents deny each and every, all and singular, generally and specifically the allegations of said Article Seventh and deny that any damage was sustained by libelant, either as alleged in said Article Seventh, or otherwise, or at all; deny that libelant is entitled to recover the sums alleged in said Article Seventh, or any other sums, or at all; whether for the reasons alleged in said Article, or any other reason, or at all.

VIII.

Answering the allegations of Article Eighth respondents deny that all or singular the premises of the libel are true, except as herein specifically admitted, but admit that if true they are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

IX.

Answering the Second Cause of Action and Article Ninth respondents incorporate herein and make a part hereof the answers hereinabove set forth to the Articles incorporated in the said Article Ninth.

X.

Answering the Third Cause of Action and Article Tenth respondents incorporate herein and make a part hereof the answers hereinabove set forth to the Articles incorporated in the said Article Tenth.

XI.

Answering the Fourth Cause of Action and Article Eleventh respondents incorporate herein and make a part hereof the answers hereinabove set forth to the Articles incorporated in the said Article Eleventh.

XII.

Answering the Fifth Cause of Action and Article Twelfth respondents incorporate herein and make a part hereof the answers hereinabove set forth to the Articles incorporated in the said Article Twelfth.

XIII.

Answering the Sixth Cause of Action and Article Thirteenth respondents incorporate herein and make a part hereof the answers hereinabove set forth to the Articles incorporated in the said Article Thirteenth.

XIV.

Answering the Seventh Cause of Action and Article Fourteenth respondents incorporate herein and make a part hereof the answers hereinabove set forth to the Articles incorporated in the said Article Fourteenth.

Wherefore, respondents pray that libelants take nothing by their libel, that said libel be dismissed, and that respondents have and recover their costs of suit incurred herein, and for such other and further relief as may be just.

TRIPP & CALLAWAY,

By /s/ HULEN C. CALLAWAY.

State of California,

County of Los Angeles—ss.

Hulen C. Callaway, being by me first duly sworn, deposes and says: that he is an attorney at law admitted to practice before all Courts of the State of California and has his office in Los Angeles County, California, and is one of attorneys for respondents in the foregoing and above entitled action; that he has read the foregoing Answer to Libel and knows the contents thereof; and that the same is true of his own knowledge, except as to the mat-

ters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

That he makes this verification on behalf of respondents herein because respondents are absent from said county where affiant has his office.

/s/ HULEN C. CALLAWAY.

Subscribed and sworn to before me this 10th day of January, 1949.

[Seal] /s/ ELIZABETH P. WILLIAMS,
Notary Public in and for the County of Los Angeles, State of California.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Jan. 10, 1949.

[Title of District Court and Cause.]

ANSWER TO INTERVENING LIBEL

To the Honorable, the Judges of the Above-Entitled Court:

The answer of Jack Borcich, Andrew Vilicich and Bortul Zankich, co-owners of the Oil Screw Marsha Ann, her engines, tackle, apparel and furniture, to the intervening libel herein of George Korgan and Sam Bilas, admit, deny and allege:

I.

Respondents allege that they have no knowledge, information or belief sufficient to answer the allega-

tions of Article I of the said intervening libel, and on that ground deny each and every, all and singular, generally and specifically the allegations of the said Article I, or that intervening libelants own any interest whatsoever in the Oil Screw Bear.

II.

Respondents admit the allegations of Article II of the intervening libel.

III.

Answering Article III respondents admit that Jack Borcich, Andrew Vilicich and Bortul Zankich at all times were, and now are, the sole owners and operators of the Oil Screw Marsha Ann. Except as herein expressly admitted respondents deny each and every, all and singular, generally and specifically the allegations of the said Article III.

IV.

Answering the allegations of Article IV respondents admit that a collision occurred between the Oil Screw Bear and the Oil Screw Marsha Ann at approximately the time alleged in the said Article IV. Except as herein expressly admitted respondents deny each and every, all and singular, generally and specifically the allegations of said Article IV.

V.

Answering the allegations of Article V of the said intervening libel respondents deny each and every, all and singular, generally and specifically the allegations of said Article V, except as hereinbelow expressly alleged or admitted.

Respondents alleged that the circumstances and happenings on the date specified in the said Article V were as follows:

On or about the 30th day of November, 1948, between 11:00 and 11:30 a.m., the Oil Screw Marsha Ann was proceeding outward through the breakwater of San Pedro Bay in a heavy fog; visibility was limited to 10-15 feet; the speed of the Marsha Ann was not more than two knots; fog signals, as prescribed by the International Rules of the Road at Sea, were being given by the Marsha Ann; when the said Marsha Ann was about 200 yards outside of the said breakwater and southeast of the Los Angeles Harbor Light, its radar operator notified Captain Jack Borchich that the radar screen indicated that three vessels, one to the starboard and two to the port, were heading for the entrance to the breakwater; Captain Borchich immediately disengaged the engine to let these boats enter the breakwater safely.

The Marsha Ann had been stopped for four or five minutes, having no way upon her, when the lookout in the bow of the Marsha Ann called attention to a vessel (The Oil Screw Bear) approximately twenty feet off the port bow of the Marsha Ann; Captain Borchich immediately sounded the danger signals, as prescribed by the International Rules of the Road at Sea; the Bear was moving at a speed greatly in excess of moderate, on a course which would have scarcely cleared the bow of the Marsha Ann, when suddenly the Bear made a turn hard to port, swinging its stern toward the Marsha

Ann in such a manner as to cause the starboard beam of the Bear to strike the stem of the Marsha Ann.

Respondents further allege that at all times herein mentioned the Marsha Ann was in all respects seaworthy, properly equipped, supplied and manned by a competent master and crew and was well, carefully and prudently navigated in accordance with the applicable International Rules of the Road at Sea.

VI.

Answering the allegations of Article VI respondents deny each and every, all and singular, generally and specifically, the allegations therein contained; further answering said Article VI these respondents deny that the alleged accident, or damage, or either or any thereof, was caused or occasioned, or in any manner contributed to by the said, or any, negligence, fault or liability on the part of these respondents, their agents or employees, or either or any of them, whether in the respects alleged in the said Article or otherwise, or at all.

In this connection, respondents allege that the Marsha Ann was guilty of no negligence and/or fault in the premises. Respondents are informed and believe and therefore allege that said collision and alleged damage to the Oil Screw Bear, if any, were due solely to the recklessness, carelessness, negligence and fault of the said Bear, its Captain and crew in the following respects:

1. The Bear did not have on watch proper and competent persons attentive to their duties;

2. The Bear did not have on watch proper and competent lookouts, properly stationed and attentive to their duties;

3. The Bear did not have a proper and competent helmsman properly stationed and attentive to his duties;

4. The Bear failed to sound proper whistle signals;

5. The Bear was navigated at an excessive speed in an erratic and reckless manner in fog and in neglect of the care required in the circumstances by the ordinary precautions of good seamanship, although she was required to exercise such precautions by the rules of navigation applicable in the circumstances;

6. The Bear failed to give due regard to the dangers of navigation and collision, and particularly the danger of collision with the *Marsha Ann*, although she was required to do so by the rules of navigation applicable in the circumstances;

7. The Bear was not seaworthy nor properly equipped, supplied or manned by a competent master and/or crew.

VII.

Answering the allegations of Article VII of the intervening libel, respondents allege that they have no information or belief sufficient to answer the allegations of Article VII and on that ground deny each and every, all and singular, generally and specifically the allegations of said Article VII and

deny that any damage was sustained by intervening libelants, either as alleged in said Article, or otherwise, or at all; and deny that intervening libelants were damaged in the sum alleged in the said Article VII, or in any other sum, or at all, whether for the reasons alleged in said Article VII or for any other reason, or at all.

VIII.

Answering the allegations of Article VIII respondents deny that all or singular the premises of the intervening libel are true, except as herein specifically admitted, but admit that if true they are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, respondents pray that intervening libelants take nothing by their intervening libel, that said intervening libel be dismissed, and that respondents have and recover their costs of suit incurred herein, and for such other and further relief as may be just.

TRIPP & CALLAWAY,

By /s/ HULEN C. CALLAWAY,

Proctors for Respondents.

State of California,
County of Los Angeles—ss.

Hulen C. Callaway, being by me first duly sworn, deposes and says: that he is an attorney at law admitted to practice before all Courts of the State of California and has his office in Los Angeles County, California, and is one of the attorneys for

respondents in the foregoing and above entitled action; that he has read the foregoing Answer to Intervening Libel and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters he believes it to be true.

/s/ HULEN C. CALLAWAY.

Subscribed and sworn to before me this 11th day of January, 1949.

[Seal] /s/ ELIZABETH P. WILLIAMS,
Notary Public in and for the County of Los Angeles, State of California.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Jan. 12, 1949.

[Title of District Court and Cause.]

STIPULATION FOR PERMISSION TO FILE INTERVENING LIBEL

It Is Hereby Stipulated by and between David A. Fall, Proctor for the libelants; Hulen C. Callaway, Proctor for the respondents; Lillick, Geary & McHose, by William A. C. Roethke, Proctors for other intervening libelants, and Ekdale & Shallenberger, by Gordon P. Shallenberger, Proctors for intervenors, W. H. Hoopes, Nick Milosevich, George Korgan and Sam Bilas, that the Intervening Libel of W. H. Hoopes, Nick Milosevich, George Korgan

and Sam Bilas may be filed forthwith, and It Is Further Stipulated that the Answer of the respondents already on file may be deemed to be a complete Answer to the Libel of the intervenors, save and except as to the damage allegations, and as to those they may be deemed to be denied by the respondents the same as though formal pleadings were on file.

It Is Further Stipulated by and between the parties that no continuance will be asked as to the pre-trial hearing set for December 5, 1949, and as to the trial set for December 8, 1949, by reason of the filing of this intervention.

Signed and dated this 2d day of December, 1949.

/s/ DAVID A. FALL,
Proctor for Libelants.

/s/ HULEN C. CALLAWAY,
Proctor for Respondents.

LILLICK, GEARY & McHOSE,

By /s/ WILLIAM A. C. ROETHKE,
Proctors for Other Intervening Libelants.

EKDALE &
SHALLENBERGER,

By /s/ GORDON P.
SHALLENBERGER,
Proctors for Intervening Libelants.

Good cause appearing therefor, It Is Hereby Ordered that the foregoing Stipulation for Permis-

sion to File Intervening Libel be allowed and filed herein and that intervenors, W. H. Hoopes, Nick Milosevich, George Korgan and Sam Bilas, be entitled to participate fully in all further proceedings herein.

Dated: Los Angeles, California, this 2nd day of December, 1949.

/s/ JAMES M. CARTER,
United States District Judge.

[Endorsed]: Filed Dec. 2, 1949.

[Title of District Court and Cause.]

INTERVENING LIBEL IN REM AND IN
PERSONAM FOR COLLISION DAMAGES

To the Honorable, the Judges of the District Court
of the United States, for the Southern District
of California, Sitting in Admiralty:

The intervening libel of W. H. Hoopes, Nick Milosevich, George Korgan and Sam Bilas, against the Oil Screw "Marsha Ann," her engines, tackle, apparel, furniture, etc., and against all persons intervening for their interests therein, and against Jack Borcich, Andrew Vilicich, Bortul Zankich, Doe I, Doe II and Doe III, in a cause of collision, civil and maritime, alleges:

I.

That all times hereinafter mentioned, these intervening libelants, George Korgan and Sam Bilas,

were, and now are, the sole and only owners of the Oil Screw "Bear," a fishing vessel.

II.

Intervening libelants herein are informed and believe, and upon such information and belief allege, that the Oil Screw "Marsha Ann" is now, or during the pendency of process herein will be, within this District and within the jurisdiction of this Honorable Court.

III.

Intervenng libelants herein are informed and believe, and upon such information and belief allege, that respondents, Jack Borcich, Andrew Vilicich, Botrul Zankich, Doe I, Doe II and Doe III, at all times hereinafter mentioned were, and now are, the owners and operators of said Oil Screw "Marsha Ann," a fishing vessel. The true names of respondents Doe I, Doe II and Doe III, are unknown to intervening libelants herein, and when their true names are ascertained, intervening libelants will ask leave of Court to amend this intervening libel to set forth the true names of said respondents in lieu of said fictitious names.

IV.

Intervening libelants herein are informed and believe, and upon such information and belief allege, that on or about November 30, 1948, at about 11:30 o'clock (Pacific Daylight Time), in the morning of said day, a collision occurred between the Oil Screw "Bear" and the Oil Screw "Marsha Ann" about

2½ miles southeast of the Los Angeles Harbor Breakwater Light, as a result of which collision said Oil Screw "Bear" was damaged, as more particularly hereinafter alleged.

V.

Intervening libelants herein are informed and believe, and upon such information and belief allege, that the circumstances of said collision were as follows: The "Bear" was proceeding at a speed of about 1½ miles per hour in a general northwesterly direction toward and about 2½ miles southeast of the Los Angeles Harbor Breakwater Light. A heavy fog was laying off the coast in this vicinity, enveloping the movements of vessels in the area. At the time of the collision and for more than an hour preceding the same, the "Bear" was sounding fog signals in compliance with the applicable Rules of the Road. Whistles of other vessels were heard in the vicinity of the "Bear," as a result of which the "Bear" alternately stopped and then proceeded with caution at a speed of approximately 1½ miles per hour. While so navigating, the "Marsha Ann" suddenly appeared, proceeding at an excessive speed, board on the starboard beam of the "Bear" at a distance of about 40 feet. Before any steps could be taken to avert or minimize the collision, the "Marsha Ann" struck the "Bear" at almost a right angle on the starboard side of the "Bear" just abaft the deck house at which time the "Bear" was virtually dead in the water. At all times herein mentioned the "Bear" was in all respects seaworthy

and properly equipped and supplied and manned by competent master and crew, and was well and carefully navigated in accordance with the applicable Rules of the Road then and then pertinent.

VI.

Intervening libelants herein are informed and believe, and upon such information and belief allege, that said Oil Screw "Bear" committed no fault and was guilty or no negligence in the premises, and said collision and damage to said Oil Screw "Bear" were solely due to the carelessness, negligence and recklessness of said Oil Screw "Marsha Ann" and respondents, and their agents and servants, in the following respects:

1. The "Marsha Ann" did not have on watch proper and competent persons attentive to their duties;

2. The "Marsha Ann" did not have on watch proper and competent lookouts, properly stationed and attentive to their duties;

3. The "Marsha Ann" did not have a proper and competent helmsman properly stationed and attentive to his duties;

4. The "Marsha Ann" failed to sound proper whistle signals;

5. The "Marsha Ann" was navigated at an excessive speed in an erratic and reckless manner in fog and in neglect of the care required in the circumstances by the ordinary precautions of good

seamanship, although she was required to exercise such precautions by the rules of navigation applicable in the circumstances;

6. The "Marsha Ann" failed to give due regard to the dangers of navigation and collision, and particularly the danger of collision with the "Bear," although she was required to do so by the rules of navigation applicable in the circumstances;

7. The "Marsha Ann," prior to the collision, having observed on her radar screen the presence of the "Bear" in a position forward of the bow of the "Marsha Ann," when the danger of collision was apparent, failed and neglected to stop or reverse her engines and then navigate with caution, until the danger of collision was over;

8. The "Marsha Ann" was negligent in other and further particulars than those hereinabove set forth, of which intervening libelants are not presently advised, but as to which these intervening libelants beg leave to offer proof when and as advised and amend this intervening libel accordingly.

VII.

That by reason of said collision, the Oil Screw vessel "Bear" was damaged, and repairs made necessary by reason thereof; that by reason of said repairs and the time necessary therefor, the vessel was unable to engage in fishing from November 30, 1949, to February 17, 1950, and has sustained a loss by reason of such detention in the amount of Five Thousand and No/100 Dollars (\$5,000.00).

VIII.

All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

For a further, second, separate and distinct cause of action, the intervening libel of W. H. Hoopes and Nick Milosevich against the Oil Screw "Marsha Ann," her engines, tackle, apparel, furniture, etc., and against all persons intervening for their interests therein, and against Jack Borcich, Andrew Vilicich, Bortul Zankich, Doe I, Doe II and Doe III, in a cause of collision, civil and maritime, alleges:

I.

These intervening libelants repeat and reallege Paragraphs I, II, III, IV, V, VI and VIII of the First Cause of Action and made a part hereof the same as though set forth herein in full.

II.

That W. H. Hoopes and Nick Bilosevich were employed as crew members aboard the vessel "Bear" for the sardine season, to wit, October 1, 1949, to March 1, 1950; that they entered upon and continued in the service of said vessel until November 30, 1949, the date of the collision hereinbefore alleged; that by reason of the negligence of the vessel "Marsha Ann" and the respondents named herein as hereinbefore alleged, the mentioned vessel "Bear" was unable to operate from the period from November 30, 1949, to February 17, 1950; that your intervening libelants, W. H. Hoopes and Nick

Milosevich, were not able to secure other employment during the period of said time; that they would have earned approximately One Thousand Five Hundred and No/100 Dollars (\$1,500.00) each had said vessel not been laid up for repairs as a result of the mentioned collision; that your intervening libelants are, therefore, damaged in the sum of One Thousand Five Hundred and No/100 Dollars (\$1,500.00) each.

For a further, third, separate and distinct cause of action, the intervening libel of George Korgan and Sam Bilas, against the Oil Screw "Marsha Ann," her engines, tackle, apparel, furniture, etc., and against all persons intervening for their interests therein, and against Jack Boreich, Andrew Vilicich, Bortul Zankich, Doe I, Doe II and Doe III, in a cause of collision, civil and maritime, alleges:

I.

These intervening libelants repeat and reallege Paragraphs I, II, III, IV, V, VI and VIII of the First Cause of Action and made a part hereof the same as though set forth herein in full.

II.

That the mentioned intervening libelants, George Korgan and Sam Bilas, at the time of the collision heretofore alleged, were both working as fishermen aboard the vessel "Bear," and entitled to a fishing share, in addition to their shares as owners of the vessel.

III.

That by reason of the collision heretofore alleged, and the negligence of the vessel "Marsha Ann," her owners, operators and the respondents named herein, the vessel "Bear" was unable to operate from the period of November 30, 1949, to February 17, 1950; that your intervening libelants, George Korgan and Sam Bilas, were not able to secure other employment; that they would have earned, for their share as fishermen, the sum of One Thousand Five Hundred and No/100 Dollars (\$1,500.00), each, had said vessel not been laid up for repairs as a result of the mentioned collision; that your intervening libelants, George Korgan and Sam Bilas, are, therefore, further damaged in the sum of One Thousand Five Hundred and No/100 Dollars (\$1,500.00).

Wherefore, your intervening libelants pray:

1. That they and each of them may be permitted to intervene according to the course and practice of admiralty and maritime jurisdiction in the proceedings in rem and in personam herein.

2. That this Honorable Court be pleased to decree the payment by the respondents, and each of them, of the damages aforesaid, together with interest thereon and costs of suit herein; and that the intervening libelants be permitted to participate in the bond, or undertaking, on file herein.

3. That these intervening libelants have such

other and further relief in the premises as they may be entitled to receive.

EKDALE &
SHALLENBERGER,

By /s/ GORDON P.

SHALLENBERGER,
Proctors for Intervening
Libelants.

Good cause appearing therefor, It Is Hereby Ordered that the foregoing Intervening Libel in Rem and in Personam for collision damage be allowed and filed herein and that intervenors, W. H. Hoopes, Nick Milosevich, George Korgan and Sam Bilas, be entitled to participate fully in all further proceedings herein.

Dated: Los Angeles, California, this 2nd day of December, 1949.

/s/ JAMES M. CARTER,
United States District Judge.

United States of America,
Southern District of California,
Central Division—ss.

George Korgan, being by me first duly sworn, deposes and says: that he is one of the Intervening Libelants in the above-entitled action; that he has read the foregoing Intervening Libel in Rem and in Personam for Collision Damages and knows the contents thereof; and that the same is true of his

own knowledge, except as to the matters which are therein stated upon his information and belief, and as to those matters that he believes it to be true.

/s/ GEORGE KORGAN.

Subscribed and sworn to before me this 1st day of December, 1949.

[Seal] /s/ GORDON P.

SHALLENBERGER,
Notary Public in and for the County of
Los Angeles, State of California.

[Endorsed]: Filed Dec. 2, 1949.

United States District Court, Southern District of
California, Central Division
No. 8960-C Admiralty

JOSEPH ANCICH, et al.,

Libelants,

vs.

D/S "MARSHA ANN," etc., et al.,

Respondents.

DISMISSAL

On the oral motion of intervening libelant Sam Bilas, made during the course of the trial, there being no objection by other parties:

It Is Ordered that the third cause of action set forth in the intervening libel herein filed by said

Sam Bilas be and it is dismissed, as to the said Sam Bilas only.

Dated: December 19, 1949.

/s/ JAMES M. CARTER,
U. S. District Judge.

Dismissal entered December 21, 1949.

Docketed December 21, 1949.

[Endorsed]: Filed December 20, 1949.

[Title of District Court and Cause.]

MINUTE ORDER—MAY 31, 1950

Calendar of: Hon. James M. Carter,
District Judge.

This cause having been taken under submission as to certain remaining issues, and the court having duly considered the matter, the court now hands down its memorandum of decision and finds in favor of libelants and intervening libelants and against respondents on said issues, and, pursuant to the oral decision rendered December 19, 1949, and the said memorandum of decision filed this date,

It Is Ordered that judgment will be in favor of libelants and intervening libelants and against respondents; counsel for libelants will prepare and submit findings of fact, conclusions of law and judgment, pursuant to local Rule 7, within ten days.

Copies mailed to counsel 5-31-5.

[Title of District Court and Cause.]

MEMORANDUM OF DECISION

James M. Carter, District Judge:

In the above-entitled matter the Court heretofore found the "Marsha Ann" was negligent and at fault.

The remaining issues in the case are decided as follows:

(1) The "Bear" was not negligent or at fault.

(a) There is evidence that the required fog signal was being given.

(b) Additional signals, even if not required, did not contribute to the happening of the collision.

(c) The Court finds that the "Bear" was not traveling at an excessive speed under all the circumstances.

(d) The Court finds that the "Bear" was stopping her engines and navigating with caution.

(e) The "Bear" reversed her engines immediately on sighting the "Marsha Ann."

(f) Under the circumstances of this case, Article 19 does not apply.

(g) The position of the lookout of the "Bear" on the open bridge was reasonable and proper under all the circumstances of the case.

(h) The position of the "Bear's" lookout did not contribute to the collision; it would

have happened regardless of where the lookout was stationed.

(2) As to damage:

(a) The "Bear's" proof showed:

\$17,770.67 for repairs

507.94 surveyor's bill

\$18,278.61

(b) Williams' testimony showed that ninety frames (forty-four plus forty-six) were in such condition that they would have had to be replaced regardless of collision.

(c) The Court finds replacing of these ninety frames not necessary and proximate result of collision.

(d) The Court finds that the cost per frame for replacing is \$40.00 per frame; \$40.00x90 equals \$3,600.00.

(e) Damage is allowed to the "Bear" in the sum of \$18,278.61, less \$3,600.00.

(f) The Court finds thirty-five work-days a reasonable time for repair, plus three days for bids.

(3) The Court determines that the libeling fishermen are entitled to recover against the "Marsha Ann."

(4) If the parties do not agree as to the amount of award to the fishermen, the matter will be referred to Howard V. Calverley, as commissioner.

(5) Findings and decree will be in accordance with this memorandum and the Clerk will enter suitable minute order therefor pursuant to the rules.

[Endorsed]: Filed May 31, 1950.

At a stated term, to wit: The February Term, A.D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 18th day of July, in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable James M. Carter,
District Judge.

[Title of Cause.]

MINUTE ORDER

It appearing that the Court's decision filed May 31, 1950, in the above-entitled cause did not contain a specific ruling on the objection of respondent made at the trial to the introduction of any evidence on behalf the libeling fishermen as to damages for loss of prospective catch, on the ground that the libeling fishermen have failed to state a claim upon which relief can be granted, now, therefore, to clarify the record,

It Is Ordered, nunc pro tunc May 31, 1950, that the said objection be and it is overruled.

Opinion relative to the rights of fishermen employed upon a lay plan has been filed this date.

[Title of District Court and Cause.]

OPINION

James M. Carter, U. S. District Judge.

This decision concerns the right of fishermen employed upon a lay plan to maintain a libel in rem and in personam in their own names against a vessel which negligently collided with the vessel on which they were employed, and thereby caused them to lose their share of a prospective catch of fish during the repair of their vessel.

The "Bear" and the "Marsha Ann," fishing vessels of 65 feet and 100 feet in length respectively, collided in the fog two miles off the breakwater of Los Angeles harbor on the morning of November 30, 1948. Ten days later seven of the fishermen on the "Bear" filed a libel in rem and in personam for damages and maintenance against the "Marsha Ann" and her owners. The crew of the "Bear" consisted of the two owners, Korgan and Bilas, and nine fishermen. The fishermen were employed on which is commonly known as a lay plan under which their compensation (instead of wages), was to be a share of the proceeds resulting from the fishing venture. The two owners also had shares, both as owners and as fishermen.

Subsequently Korgan and Bilas, owners of the "Bear," filed an intervening libel against the same respondents seeking recovery only for the damages

sustained by their vessel and the cost of repair.

Then on December 2, 1949, almost a year later, but before trial, the two owners of the "Bear" joined by the two remaining fishermen on that vessel, filed another intervening libel in which the owners sought to recover damages for the loss of the use of the "Bear" during the remainder of the fishing season and also their share of the probable catch as fishermen, in addition to their share as owners. The two remaining fishermen libelled for their respective shares also.

The cumulative result of the original libel by the "Bear's" fishermen, and two subsequent intervening libels was an action in rem and in personam against the "Marsha Ann" and her owners by the two owners of the "Bear" and her nine fishermen. The owners sought to recover for damages to their vessel, loss of her use, and their shares of the probable catch for the remainder of the fishing season, both as owners and as fishermen. The nine fishermen prayed that they be allowed to recover their shares of the expected but unrealized profits of the venture.

The respondents answered by general denial, and at the start of the trial, by stipulation, the "Marsha Ann" and her owners were permitted to amend their answers by the addition of a further defense to the effect that the original libel of the seven fishermen and the intervening libels of the remainder of the "Bear's" crew failed to state a cause of action upon which relief could be granted, and

in particular that the fishermen did not allege that they owned the boat or the fish, nor did they allege any tort injury to themselves. It was the further contention of the respondents that the fishermen's rights are solely those of contract; that the fishermen's showing would consist of evidence that the "Marsha Ann" negligently interfered with that right and that although courts will give relief for intentional interference with contract rights, relief for negligent interference with contract rights will not be granted.

In support of their argument the respondents rely on *Robbins Dry Dock and Repair Co. v. Flint*, 275 U. S. 303, 48 S. Ct. 135, 72 L. Ed. 290 (1927). In that case the owners of a vessel time-chartered her to libelants. The owners docked her with a dry-docker under a provision of the charter providing for docking every six months and suspending payment for hire during the period of this service. The dry-docker negligently broke the propeller, causing the ship to be laid up longer than anticipated. The time charterers libelled the vessel for damage for loss of use. The district court allowed recovery and the court of appeals affirmed. The dry-docker then sought certiorari. The Supreme Court, in reversing, held that a tort to the person or property of one man does not make the tort-feasor liable to another merely because the injured person was under a contract with that other, unknown to the wrongdoer.

We hold that the decision in the *Robbins* case is not controlling. The facts in the case at bar are

entirely different. Fishermen, serving on a vessel under a lay plan, where their compensation for services is dependent upon the success of the venture, are not charterers. *The Carrier Dove*, 97 Fed. 111, 38 C.C.A. 73. Nor is there any contractual relation between their employer and the tortfeasor as in the *Robbins* case between the owners and the dry-docker. The damages which the charterers sought to recover from the dry-dockers in the *Robbins* case consisted of the profits they would have realized from other sources in no way connected with the use of the boat by the owner, the person in possession.

In the *Robbins* case, the Supreme Court said, p. 309:

“* * * The decision of the Circuit Court of Appeals seems to have been influenced by the consideration that if the whole loss occasioned by keeping a vessel out of use were recovered and divided a part would go to the respondents. It seems to have been thought that perhaps the whole might have been recovered by the owners, that in that event the owners would have been trustees for the respondents to the extent of the respondents' share, and that no injustice would be done to allow the respondents to recover their share by direct suit * * *”

and then rejected this theory.

The law is otherwise in the case of seamen employed upon a lay plan, and recovery may be had

by the owner of the vessel in behalf of the fishermen for their prospective share of the catch. *Taber v. Jenny*, Fed. Cas. No. 13720, (D. C. Mass.-1856); *U. S. v. Laffin*, 24 F. 2d 683 (1928).

It is well settled law that damages for the detention of a commercial vessel are to be measured by the profits which the owner would have realized from her use, had she been free.

The Potomac,

105 U.S. 630, 26 L. Ed. 1194 (1881);

The Conqueror,

166 U. S. 110, 17 S. Ct. 510, 41 L. Ed. 937
(1897);

The Woolsum,

14 F. 2d 371 (1926);

The Priscilla,

27 F. 2nd 921 (1928).

In the case of fishing vessels, probable earnings, when proven with reasonable certainty, are included as an item of damages arising from a tortious detention.

The Mary Steele,

Fed. Cas. No. 9226 (D. C. Mass.-1874);

The Columbia,

Fed. Cas. No. 3035 (D. C., E. D. N. Y.-
1877);

Oriel v. Sea Owl,

1948 A.M.C. 445;

Pacific Steam Whaling Co. v. Alaska Packers Assn.;
138 Cal. 632 (1903).

We entertain no doubt but that the owners of the "Bear" could libel the "Marsha Ann," and any damages recovered would include the anticipated earnings of the "Bear" for the period she was undergoing repairs. And the crewmen, being entitled by the terms of the lay plan to a share of the profits, would be able to assert their claim to their aliquot portion of the amount recovered by the owner. See *U. S. v. Laffin*, *supra*. In that case the owner of a sealing vessel, operating under a lay plan, recovered damages from the United States for unwarranted interference with the ship's sealing operations. The award of the Court included expected earnings, and the owner was made trustee thereof for the satisfaction of the crewmen's claims. Thus, eventually, the crewmen recovered their loss by sharing in the recovery of the owner. Although the action was brought under a special statute, (June 7, 1924, 43 Stat. 595, 28 USCA, §52, the Court held that the statute "must be presumed to have been enacted in view of the well settled principles applicable to the owner's right to represent the crew in such cases" and permitted the owner to bring the action as a representative of the crew.

The *Laffin* case, *supra*, states also in general terms, p. 685:

"* * * it is equally well stated that neither officers nor members of the crew may join

with the owners in a recovery of the proceeds of the voyage and that the owners of the vessel and projectors of the voyage are the owners of the products thereof * * *”

In support thereof is cited:

Baxter v. Rodman,
3 (Mass.) Pick. 435;

Grozier v. Atwood,
4 (Mass.) Pick. 234;

Tabor v. Jenney,
Fed. Cas. No. 13720, 1 Spr. 315, 322.

The dire results foreseen in these cases if members of a crew on a lay plan were permitted to sue are not applicable to the case at bar. The Baxter case refers to the fact that if each seaman was a tenant in common with the other seamen and the owners in the fruits of the fishing voyage, “no action can be brought respecting it (the whaling oil) without joining all and none can be sued without the whole, giving every seaman the right to discontinue the action or to release the claim or to receive payment of the whole.” In our case, all the fishermen have joined in the action. All interested parties are before the Court. But if all the fishermen had not joined in the libel, an admiralty court has the authority to join as co-libelants all the fishermen having a cause of complaint of the same kind to minimize litigation and to adjudicate all interests of a similar nature.

The language of the Baxter case, *supra*, quoted

in the Laffin case, *supra*, refers to both joint ownership and tenancy in common, and makes no adequate distinction between them. The claim of the fishermen is a claim to his undivided share of the catch,—at most, a tenancy in common. As such a tenant in common, he would have no right to “discontinue the action or to release the claim” as to all, or “to receive payment of the whole.” The anticipated procedural difficulties predicted in the Baxter case fails to impress us and is far outweighed by the equity and expediency gained by allowing the fishermen to sue in their own name.

In *The Mary Steele*, *supra*, the owners and the crew were both parties to the libel and in *The Columbia*, *supra*, the report of the commissioner, exceptions to which were overruled, allowed “the seamen who libelled for their share, 1/6 of the catch so estimated.” These two cases, although not sustaining the right to a cause of action in the crew alone, throw doubt upon the broad statement contained in the Laffin case “that neither the officers nor members of the crew may be joined with the owners in a recovery of the proceeds of a voyage.”

It has long been recognized that the admiralty courts in the administration of justice, deal liberally with seamen. Seamen are the special wards of admiralty because of the nature of their services and its accompanying dangers. (Benedict on Admiralty, 6th Edition, Sec. 621.) The maritime courts having jurisdiction over seamen, have for generations made every effort to protect their rights

and interests. Admiralty rules of pleading are to be liberally construed and in dealing with sailors' rights, admiralty will grant them relief if justice is served, and adjudge their rights where equity and expediency are gained. While an admiralty court does not have general equitable jurisdiction, it acts upon equitable principles and should give relief where a court of equity would relieve and a court of law would not.

Benedict on Admiralty,
6th Edition, Sec. 223.

Watts v. Camors,
115 U. S. 353, 6 S. Ct. 91, 29 L. Ed. 406
(1885);

U. S. v. Cornell Steamboat Co.,
202 U. S. 184, 26 S. Ct. 648, 50 L. Ed. 987
(1906);

Van Kamp Sea Food Co. v. Di Leva,
171 F. 2d 454 (1948).

In *Van Kamp Sea Food Co. v. Di Leva*, *supra*, the sharesmen were allowed to maintain a libel for loss of earnings due to the lay up for repairs of their vessel from a collision caused by the negligent navigation of another vessel also owned by their employer. But the right of action was allowed the fishermen because the respondent owned both boats. The Court reasoned that the respondent could not be expected to sue itself for the benefit of the fishermen, hence the action was allowed on equitable principles. Judge Denman cut through legal

form and procedure, and said in substance: Since the fishermen in justice and equity have an ultimate claim to their prospective share of the catch, then they may maintain a cause of action in their own names.

In equity and justice, why should the recovery of loss of profits by seamen serving under the lay plan be contingent on the action taken by their employer?

These fishermen have suffered serious damage as a result of the collision. They have no right of recovery against their master or the owner of the boat unless he be at fault. *Reed v. Hussey*, (1836) Fed. Case No. 11646. Their contract of employment is terminated by operation of maritime law upon the breaking up of the voyage as a result of the collision. *The Elk*, 1938 A.M.C. 714. To refuse them the right to sue in their own names, places them at the whim and caprice of their employer and may involve conflicting interests. Upon the trial of the libel herein both the "Marsha Ann" and the "Bear" might be held negligent. True, the fishermen named only the "Marsha Ann" and not the "Bear." However, a recovery by them against the "Marsha Ann," if the "Bear" was also found negligent, would give the "Marsha Ann" a right to contribution from the "Bear." Had the owners of the "Bear" sued in behalf of the fishermen, it is arguable that there might have arisen conflicts of interests in the prosecution of the libel. These conflicts do not arise when the fishermen sue in their own names.

Benedict on Admiralty, 6th Edition, §230 states:

“§230. The Parties. * * * There are no special Admiralty Rules concerning the capacity of parties, whether as infants, incompetents, agents, foreign corporations and the like. In these matters the admiralty courts have largely followed the local State practice; but as they are fully covered by the Federal Civil Rules, it would seem logical for the admiralty side of the court to apply Civil Rule 17, which expresses what the admiralty practice has actually been, namely: That actions shall be prosecuted in the name of the real party in interest; * * *”

And in §245:

“The party really entitled to the relief should always be made libellant. There is no Admiralty Rule to this effect, but the practice is of long standing. The Civil Rules put it still more sharply and say that every action shall be prosecuted in the name of the real party in interest: Rule 17(a) * * *”

Certainly the fishermen are the real parties in interest in such an action as this, and as such should be the parties to bring the libel. To restrict the right of recovery of future profits to the owner of the injured fishing vessel, and to make the fishermen's recoupment dependent upon the owner's successful exercise of that right is to deny a cause of action to the real persons in interest and channels the money rightfully due the fishermen through

a third party who is ultimately entitled only to a fractional portion thereof. Aside from the physical damages suffered to the boat, the nature of the losses sustained by owners and fishermen are identical. In amount, the claims of the fishermen usually greatly exceed those of the owner.

For the reasons set forth above, we hold that where all the fishermen of a vessel serving under a lay plan, have joined as parties libelant to recover their share of a prospective catch, they have a cause of action which can be maintained in their names in the district court.

[Endorsed]: Filed July 18, 1950.

[Title District Court and Cause.]

FINDING OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial before the Honorable James M. Carter, United States District Judge, in the above-entitled Court on December 8th, 9th, 13th, 14th and 19th, 1949, upon the issues raised by the libel (hereinafter referred to as the Ancich libel) of Joseph Ancich, John Kaiza, Anton Bogdanovich, Peter Svorinich, Martin Miskulin, Ray Zukowski and William T. Decker, who were represented by David A. Fall, Esq.; the intervening libel (hereinafter referred to as the Korgan libel) of George Korgan and Sam Bilas, who were represented by Messrs. Lillick,

Geary & McHose by William A. C. Roethke, Esq.; the intervening libel (hereinafter referred to as the Hoopes libel) of W. H. Hoopes, Nick Milosevich, George Korgan and Sam Bilas, who were represented by Messrs. Ekdale & Shallenberger by Gordon P. Shallenberger, Esq.; and the answers thereto of the respondents, Oil Screw Marsha Ann, her engines, tackle, apparel, furniture, etc., and Jack Borcich, Andrew Vilicich and Bortul Zankich, who was represented by Messrs. Tripp & Calloway by Hulen C. Calloway, Esq.; and

Evidence, both oral and documentary, having been received by the Court and the matter having been argued by counsel both orally and upon written briefs; and

The Court after consideration of the evidence and the law and the arguments of counsel, and having been fully advised in the premises, and having taken the matter under submission, and having filed its minute order of May 31, 1950, and a memorandum of decision that same day, and an opinion filed July 18, 1950, for judgment in favor of libelants and intervening libelants and against respondents, now makes its Findings of Fact and Conclusions of Law, as follows:

Findings of Fact

I.

The court finds that the allegations of Article I of the Ancich libel are true, save and except that the section of Title 28, United States Code should read 1916 rather than 837.

II.

The Court finds that the Bear is an oil screw fishing vessel and George Korgan and Sam Bilas were the sole and only owners thereof at all times mentioned in the Ancich, Korgan and Hoopes libels.

III.

The Court finds that the Marsha Ann is an oil screw fishing vessel and Jack Borcich, Andrew Vilicich and Bortul Zankich were the sole and only owners thereof at all times mentioned in the Ancich, Korgan and Hoopes libels.

IV.

The Court finds that on November 30, 1948, at or about the hour of 11:30 a.m., a collision occurred between the Bear and the Marsha Ann as a point approximately 2 miles southeast of the Los Angeles Harbor Breakwater Light; and that as a result of said collision the various libelants and intervening libelants sustained damage as hereinafter more particularly set out.

V.

The Court finds that the facts pertinent to said collision are as follows: The Bear was proceeding at a speed of about 11½ miles per hour in a general northwesterly direction toward and about 2 miles southeast of the Los Angeles Harbor Breakwater Light. A heavy fog was laying off the coast in this vicinity enveloping the movements of vessels in the area. At the time of the collision and for more than an hour preceding the same, the Bear was

sounding fog signals in compliance with the applicable Rules of the Road. Whistles of other vessels were heard in the vicinity of the Bear as a result of which the Bear alternately stopped and then proceeded with caution at a speed of approximately 11½ miles per hour. While so navigating, the Marsha Ann appeared from out of the fog, broad on the starboard beam of the Bear at a distance of about 40 feet; that the speed of the Marsha Ann at the time of sighting the Bear was immoderate and unwarranted under the circumstances and constituted negligence. Before any steps could be taken to avert or minimize the collision, the Marsha Ann struck the Bear at almost a right angle on the starboard side of the Bear just abaft the deck house at which time the Bear was virtually dead in the water.

VI.

The Court finds that the Marsha Ann was equipped with radar and that the Bear was not; that the Marsha Ann picked up the Bear on its radar some minutes before the collision but at no time prior to impact did the Marsha Ann take any steps to avoid the collision by reversing her engines or coming to a complete stop.

VII.

The Court finds that the foregoing faults and negligence of the Marsha Ann, especially her excessive speed through the water, were the direct and sole cause of the collision and of the damage resulting therefrom.

VIII.

The Court finds that the Bear prior to and at the time of said collision was seaworthy and was properly equipped and supplied, manned by a competent crew and was well and carefully navigated, was maintaining a proper and efficient lookout and was observing all of the rules and regulations applicable to a vessel in her situation.

IX.

The Court finds that the Bear was not negligent or at fault in any respect contributing to the collision.

X.

The Court finds that:

(a) The required fog signal was being given by the Bear.

(b) Additional signals by the Bear, even if not required, did not contribute to the happening of the collision.

(c) The Bear was not traveling at an excessive speed under all the circumstances.

(d) The Bear was stopping her engines and navigating with caution.

(e) The Bear reversed her engines immediately on sighting the Marsha Ann.

(f) Under the circumstances of this case, Article 19 of the International Rules does not apply.

(g) The position of the lookout on the Bear on the open bridge was reasonable and proper under all the circumstances of the case.

(h) The position of the Bear's lookout did not contribute to the collision; it would have happened regardless of where the lookout was stationed.

XI.

The Court finds that the prospective catch which the Bear would have made, and for which damage is allowable, for the period of the thirty-eight (38) days which was the reasonable lay-up time for the bids and repairs to the Bear, would have been 270 tons; that the price per ton of fish was \$50.00, making a total loss of catch in the amount of \$13,500.00; that the crew members of the Bear were fishing on a lay of 68% for the crew and 32% for the Bear; that the intervening libelants George Korgan and Sam Bilas are entitled to the sum of \$4,320.00, as damage against the respondents for loss of use of the Bear for the period of 38 days; that the following libelants as crew members of the Bear sustained damage on account of loss of fishing time in the amount set down opposite their respective names:

John Ancich	\$918.00
John Kaiza	\$918.00
Anton Bogdanovich	\$918.00
Peter Svorinich	\$918.00
Martin Miskulian	\$918.00
Ray Zukowski	\$918.00
William T. Decker	\$918.00
George Korgan	\$918.00
Nick Milosevich	\$918.00
W. H. Hoopes	\$418.00

XII.

The Court finds that as a result of said collision the following expenditures were reasonably incurred by libelants George Korgan and Sam Bilas:

(a) For repairs to Bear.....	\$17,770.67
(b) Surveyors' fees	507.94

Total	\$18,278.61
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XIII.

The Court finds that 90 frames of the Bear were in such condition that they would have had to be replaced regardless of collision and that the replacing of the same was not the necessary and proximate result of the collision; that the cost of replacing each frame was \$40.00 or a total of \$3,600.00; that damage is allowed libelants George Korgan and Sam Bilas in the sum of \$18,278.61, less \$3,600.00, or \$14,678.61.

XIV.

That pursuant to a dismissal of the claim of intervening libelant Sam Bilas for a share of wages, he is not entitled to recover any amount therefor.

XV.

That pursuant to testimony of W. H. Hoopes that he earned \$500.00 during the time the Bear was laid up undergoing repairs, it was stipulated that his recovery be reduced by that amount; hence the amount set opposite his name in Finding Number XI hereinabove.

Conclusions of Law

And as Conclusions of Law from the foregoing facts, the Court finds:

1. The Bear committed no fault or negligence in the premises.

2. The Marsha Ann's negligent navigation, and faults were the sole and proximate cause of the collision.

3. That the following libelants, and each of them, is entitled to a decree against the respondents for loss of wages in the amounts set opposite their respective names, together with interest thereon from November 30, 1948, at 7% per annum, to wit:

John Ancich	\$918.00
John Kaiza	\$918.00
Anton Bogdanovich	\$918.00
Peter Svorinich	\$918.00
Martin Miskulian	\$918.00
Ray Zukowski	\$918.00
William T. Decker	\$918.00
George Korgan	\$918.00
W. H. Hoopes	\$418.00
Nick Milosevich	\$918.00

4. That intervening libelants George Korgan and Sam Bilas are entitled to a decree against respondents in respect of the damage to the Bear for the total sum of \$14,678.61, together with interest at 7% per annum on the amount of \$14,170.67 from November 30, 1948.

5. That intervening libelants George Korgan and Sam Bilas are entitled to a decree against respondents for loss of use of the Bear in the amount of \$4,320.00, together with interest thereon at 7% per annum from November 30, 1948.

6. That said libelants and intervening libelants, and each of them, are entitled to their costs of suit herein incurred.

Let a final decree be entered accordingly.

Dated: Los Angeles, California, September 13, 1950.

/s/ JAMES M. CARTER,

United States District Judge.

[Endorsed]: Filed Sept. 13, 1950.

In the District Court of the United States, Southern
District of California, Central Division

In Admiralty No. 8960-C

JOSEPH ANCICH, et al.,

Libelants,

vs.

D/S "MARSHA ANN," Her Engines, Tackle, App-
parel, Furniture, Etc., and JACK BORICH,
et al., Her Owners,

Respondents.

GEORGE KORGAN and SAM BILAS,

Intervening Libelants,

vs.

OIL SCREW, "MARSHA ANN," Her Engines,
Tackle, Apparel, Furniture, Etc., and JACK
BORICH, ANDREW VILICICH, BORTUL
ZANKICH, et al.,

Respondents.

W. H. HOOPES, NICK MILOSEVICH,
GEORGE KORGAN and SAM BILAS,

Intervening Libelants,

vs.

OIL SCREW, "MARSHA ANN," Her Engines,
Tackle, Apparel, Furniture, Etc., and JACK
BORICH, ANDREW VILICICH, BORTUL
ZANKICH, et al.,

Respondents.

FINAL DECREE

By reason of the law and Findings of Fact on

file herein, It Is Hereby Ordered, Adjudged and Decreed:

I.

That the following libelants, as crew members of the Bear, do have and recover from the Oil Screw Marsha Ann and from Jack Borcich, Andrew Vilicich and Bortul Zankich, the amount set down opposite their respective names, together with interest thereon from November 30, 1948, at 7% per annum until paid, to wit:

John Ancich	\$918.00
John Kaiza	\$918.00
Anton Bogdonovich	\$918.00
Peter Svorinich	\$918.00
Martin Miskulin	\$918.00
Ray Zukowski	\$918.00
William T. Decker	\$918.00
George Korgan	\$918.00
W. H. Hoopes	\$418.00
Nick Milosevich	\$918.00

II.

That intervening libelants George Korgan and Sam Bilas do have and recover from the Oil Screw Marsha Ann, and from Jack Borcich, Andrew Vilicich and Bortul Zankich, in respect of the damages to the Bear, the sum of \$14,678.61, together with interest from November 30, 1948, at 7% per annum on the amount of \$14,170.67 until paid.

III.

That intervening libelants George Korgan and

Sam Bilas do have and recover from the Oil Screw Marsha Ann and from Jack Borcich, Andrew Vili-cich and Bortul Zankich in respect of the loss of use of the Bear the sum of \$4,320.00, together with interest thereon at 7% per annum from November 30, 1948, until paid.

IV.

That libelants and intervening libelants do have and recover from the Oil Screw Marsha Ann and from Jack Borcich, Andrew Vilicich and Bortul Zankich, their costs of suit herein incurred as follows:

(a) Libelants John Ancich, John Kaiza, Anton Bogdonovich, Peter Svorinich, Martin Miskulin, Ray Zukowski, William T. Decker, George Korgan, W. H. Hoopes and Nick Milosevich, \$36.50.

(b) Intervening libelants George Korgan and Sam Bilas, \$66.30.

(c) Intervening libelants W. H. Hoopes, Nick Milosevich, George Korgan and Sam Bilas, \$30.00.

Dated: Los Angeles, California, this 13th day of September, 1950.

/s/ JAMES M. CARTER,

United States District Judge.

Judgement entered September 14, 1950.

Receipt of copy acknowledged.

[Endorsed]: Filed Sept. 13, 1950.

[Title of District Court and Cause.]

PETITION FOR APPEAL AND ORDER
ALLOWING APPEAL

To the Honorable the Judges of the United States
Court of Appeals for the Ninth Circuit:

The petition of Jack Borcich, Andrew Vilicich and Bortul Zankich, Co-Owners of the Oil Screw Marsha Ann, respectfully, shows as follows:

I.

That on or about the 9th day of December, 1948, the libelants herein filed their libel in the District Court of the United States for the Southern District of California against the D/S "Marsha Ann," her engines, tackle, apparel, furniture, etc., and Jack Borcich, Andrew Vilicich and Bortul Zankich, in a libel in rem and in personam for damages, wages and maintenance, civil and maritime, to recover \$1,800.00 for each libelant for damages, wages and maintenance, as by reference to the said libel will more fully appear.

II.

That on or about the 27th day of December, 1948, the intervening libelants George Korgan and Sam Bilas filed their intervening libel in the District Court of the United States for the Southern District of California against the Oil Screw "Marsha Ann," her engines, tackle, apparel, furniture, etc., and Jack Borcich, Andrew Vilicich and Bortul Zankich, in an intervening libel in rem and in per-

sonam for collision damage to recover \$20,000.00 for costs of repair to the Oil Screw Bear, as by reference to said intervening libel will more fully appear.

III.

That on or about the 2nd day of December, 1949, the intervening libelants W. H. Hoopes, Nick Milosevich, George Korgan and Sam Bilas filed their intervening libel in the District Court of the United States for the Southern District of California against the Oil Screw "Marsha Ann," her engines, tackle, apparel, furniture, etc., in an intervening libel in rem and in personam for collision damage to recover \$5,000.00 for loss of profits by reason of detention and for \$1,500.00 each for W. H. Hoopes and Nick Milosevich for damages by reason of inability to secure employment during the aforesaid detention period, as by reference to the said intervening libel will more fully appear.

IV.

That on or about the 10th day of January, 1949, the respondents filed herein their answer to the libel and on the 12th day of January, 1949, respondents filed their answer to the intervening libel of George Korgan and Sam Bilas and on the 2nd day of December, 1949, a stipulation was entered into by all of the parties hereto, through their respective counsel wherein it was stipulated that the answers of respondents already on file be deemed to be a complete answer to the libel of the intervenors W. H. Hoopes, Nick Milosevich, George Korgan and Sam Bilas, save and except as to the

damage allegations and as to those allegations it was stipulated that they be deemed denied by respondents as though formal pleadings were on file herein; that on the 2nd day of December, 1949, an order was signed allowing the said stipulation and ordering the same filed.

That such proceedings were thereafter had in this case on the 8th, 9th, 13th, 14th, 15th and 19th days of December, 1949, this cause came on for trial and argument before Honorable James M. Carter, District Judge, at the courtroom of said Court, in the United States Court House, Los Angeles, California, and at the close of said trial the Court rendered its decision, holding the "Marsha Ann" and Jack Borcich, Andrew Vilicich and Bortul Zankich solely at fault for the collision and damages set forth in the libel and intervening libels. Thereafter, on September 14, 1950, a final decree was made and entered in this case whereby it was ordered, adjudged and decreed:

"I.

"That the following libelants, as crew members of the Bear, do have and recover from the Oil Screw Marsha Ann and from Jack Borcich, Andrew Vilicich and Bortul Zankich, the amount set down opposite their respective names, together with interest thereon from November 30, 1948, at 7% per annum until paid, to wit:

John Ancich	\$918.00
John Kaiza	918.00
Anton Bogdonovich	918.00

Peter Svorinich	\$918.00
Martin Miskulin	918.00
Ray Zukowski	918.00
William T. Decker	918.00
George Korgan	918.00
W. H. Hoopes	418.00
Nick Milosevich	918.00

“II.

“That intervening libelants George Korgan and Sam Bilas do have and recover from the Oil Screw Marsha Ann, and from Jack Borcich, Andrew Vili-
cich and Bortul Zankich, in respect of the dam-
ages to the Bear, the sum of \$14,678.61, together
with interest from November 30, 1948, at 7% per
annum on the amount of \$14,170.67 until paid.

“III.

“That intervening libelants George Korgan and Sam Bilas do have and recover from the Oil Screw Marsha Ann and from Jack Borcich, Andrew Vili-
cich and Bortul Zankich in respect of the loss of
use of the Bear the sum of \$4,320.00, together with
interest thereon at 7% per annum from November
30, 1948, until paid.

“IV.

“That libelants and intervening libelants do have and recover from the Oil Screw Marsha Ann and from Jack Borcich, Andrew Vilicich and Bortul Zankich, their costs of suit herein in-
curred.”

VI.

That these petitioners, Jack Borcich, Andrew Vilicich and Bortul Zankich, Co-owners of the Oil Screw Marsha Ann, are advised and believe that said final decree and the said decision whereon it was rendered are erroneous, in that said decision did not adjudge and said final decree did not decree the relief prayed for in the said answers to the libel and intervening libels herein, and did not decree that said libel and intervening libels be dismissed as to these petitioners with costs.

Your petitioners therefore pray that they may be allowed to appeal from said final decree to the next term of the Court of Appeals for the Ninth Circuit, and that a transcript of record of the proceedings and papers upon which said decree was made, duly authenticated, may be sent accordingly to said Court of Appeals, and that the usual citation may issue in order

(1) That the said decree may be reviewed and may be modified, by said Court of Appeals, insofar as it orders and decrees the several matters alleged as error in the assignments of error herewith filed;

(2) That the conclusions of law of the said District Court herein may be reviewed and modified, by the said Court of Appeals, insofar as the said District Court herein concluded erroneously as alleged in the assignments of error herewith filed;

(3) That the findings of fact of the said District Court herein may be reviewed in part and may be modified, by the said Court of Appeals, insofar as

the said District Court herein found the facts alleged as error in the assignments of error herewith filed.

JACK BORCICH, ANDREW VILICICH and
BORTUL ZANKICH, Co-Owners of the Oil
Screw Marsha Ann.

By /s/ HULEN C. CALLAWAY,
Proctor for Petitioners.

ORDER

It Is Ordered that the appeal herein be allowed as prayed for.

Dated this 26th day of October, 1950.

/s/ JAMES M. CARTER,
U. S. District Judge.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Oct. 26, 1950.

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

The petitioners Jack Borcich, Andrew Vilicich and Bortul Zankich, Co-Owners of the Oil Screw Marsha Ann, hereby assign error in the proceedings, findings, conclusions, decrees, orders and decisions of the District Court in the above-entitled action as follows:

First: The District Court erred when it ordered, adjudged and decreed:

That the following libelants, as crew members of the Bear, do have and recover from the Oil Screw Marsha Ann and from Jack Borcich, Andrew Vilicich and Bortul Zankich, the amount set down opposite their respective names, together with interest thereon from November 30, 1948, at 7% per annum until paid, to wit:

John Ancich	\$918.00
John Kaiza	918.00
Anton Bogdonovich	918.00
Peter Svorinich	918.00
Martin Miskulin	918.00
Ray Zukowski	918.00
William T. Decker.....	918.00
George Korgan	918.00
W. H. Hoopes.....	418.00
Nick Milosevich	918.00

That intervening libelants George Korgan and Sam Bilas do have and recover from the Oil Screw Marsha Ann, and from Jack Borcich, Andrew Vili-cich and Bortul Zankich, in respect of the dam-ages to the Bear, the sum of \$14,678.61, together with interest from November 30, 1948, at 7% per annum on the amount of \$14,170.67 until paid.

That intervening libelants George Korgan and Sam Bilas do have and recover from the Oil Screw Marsha Ann and from Jack Borcich, Andrew Vili-cich and Bortul Zankich in respect of the loss of use of the Bear the sum of \$4,320.00, together with

interest thereon at 7% per annum from November 30, 1948, until paid.

That libelants and intervening libelants do have and recover from the Oil Screw Marsha Ann and from Jack Borcich, Andrew Vilicich and Bortul Zankich, their costs of suit herein incurred.

Second: The District Court erred when it concluded:

(1) That the Bear committed no fault or negligence in the premises;

(2) That the Marsha Ann navigated negligently or committed any faults which were the sole and proximate cause of the collision;

(3) That the following libelants, and each of them, is entitled to a decree against the respondents for loss of wages in the amounts set opposite their respective names, together with interest thereon from November 30, 1948, at 7% per annum, to wit:

John Ancich	\$918.00
John Kaiza	918.00
Peter Svorinich	918.00
Martin Miskulian	918.00
Ray Zukowski	918.00
William T. Decker.....	918.00
George Korgan	918.00
W. H. Hoopes.....	418.00
Nick Milosevich	918.00
Anton Bogdanovich	918.00

(4) That intervening libelants George Korgan

and Sam Bilas are entitled to a decree against respondents in respect of the damage to the Bear for the total sum of \$14,678.61, together with interest at 7% per annum on the amount of \$14,170.67 from November 30, 1948.

(5) That intervening libelants George Korgan and Sam Bilas are entitled to a decree against respondents for loss of use of the Bear in the amount of \$4,320.00, together with interest thereon at 7% per annum from November 30, 1948.

(6) That said libelants and intervening libelants, and each of them, are entitled to their costs of suit incurred herein.

Third: The District Court erred when it did not conclude that the Oil Screw Bear was solely at fault in the said collision.

Fourth: The District Court erred when it found that the allegations of Article I of the Ancich libel are true.

Fifth: The District Court erred when it found that as a result of the said collision the libelants and intervening libelants sustained damage as alleged.

Sixth: The District Court erred when it found:

(1) That at the time of the said collision the Bear was proceeding at a speed of about 1 to 1½ miles per hour.

(2) That at the time of the said collision and for more than an hour preceding the same the Bear

was sounding fog signals in compliance with the applicable Rules of the Road.

(3) That the Bear alternately stopped and proceeded with caution at a speed of approximately 11½ miles per hour upon hearing whistles in the vicinity.

(4) That while so navigating the Marsha Ann appeared from out of the fog broad on the starboard beam of the Bear at a distance of about 40 feet.

(5) That the speed of the Marsha Ann at the time of sighting the Bear was immoderate and unwarranted under the circumstances and constituted negligence.

(6) That before any steps could be taken to avert or minimize the collision, the Marsha Ann struck the Bear at almost a right angle on the starboard side of the Bear just abaft the deck house.

(7) That at the time of the said collision the Bear was virtually dead in the water.

Seventh: The District Court erred when it found that at no time prior to the impact did the Marsha Ann take any steps to avoid the collision by reversing her engines, or coming to a complete stop.

Eighth: The District Court erred when it found:

(1) That the Marsha Ann was negligent or committed any faults which were the direct and sole

cause of the collision and of the alleged damage.

(2) That the Marsha Ann was moving at an excessive speed at the time of the said collision.

Ninth: The District Court erred when it found:

(1) That the Bear prior to and at the time of said collision was seaworthy and was properly equipped and supplied.

(2) That the Bear was manned by a competent crew.

(3) That the Bear was well and carefully navigated.

(4) That the Bear was maintaining a proper and efficient lookout.

(5) That the Bear was observing all of the rules and regulations applicable to a vessel in her situation.

Tenth: The District Court erred when it found that the Bear was not negligent or at fault in any respect contributing to the collision.

Eleventh: The District Court erred when it found:

(1) That the required fog signal was being given by the Bear.

(2) That additional signals by the Bear, which were not required, did not contribute to the happening of the collision.

(3) That the Bear was not traveling at an excessive speed under all the circumstances.

(4) That the Bear was stopping her engines and navigating with caution.

(5) That the Bear reversed her engines immediately on sighting the Marsha Ann.

(6) That under the circumstances of this case, Article 19 of the International Rules does not apply.

(7) That the position of the lookout on the Bear on the open bridge was reasonable and proper under all the circumstances of the case.

(8) That the position of the Bear's lookout did not contribute to the collision; that it would have happened regardless of where the lookout was stationed.

Twelfth: The District Court erred when it found:

(1) That the prospective catch which the Bear would have made would have been 270 tons.

(2) That the period of 38 days was a reasonable lay-up time for bids and repairs to the Bear.

(3) That the intervening libelants George Korgan and Sam Bilas are entitled to the sum of \$4,320.00 as damages against the respondents for loss of use of the Bear for a period of 38 days.

Thirteenth: The District Court erred when it found that the following libelants as crew members of the Bear sustained damage on account of loss of fishing time in the amount set down opposite their respective names.

John Ancich	\$918.00
John Kaiza	918.00
Anton Bogdanovich	918.00
Peter Svorinich	918.00
Martin Miskulian	918.00
Ray Zukowski	918.00
William T. Decker.....	918.00
George Korgan	918.00
W. H. Hoopes.....	418.00
Nick Milosevich	918.00

Fourteenth: The District Court erred when it found that the intervening libelants George Korgan and Sam Bilas were damaged in the sum of \$14,-678.61 for repairs and surveyor's fees as a result of the said collision.

Dated this 26th day of October, 1950.

TRIPP & CALLAWAY,

By /s/ HULEN C. CALLAWAY,
Proctors for Respondents.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Oct. 26, 1950.

CITATION ON APPEAL

United States of America—ss.

To Joseph Ancich, John Kaiza, Anton Bogdanovich, Peter Svorinich, Martin Miskulian, Ray Zukowski and William T. Decker, Libelants, and to: David A. Fall, Esq., their proctor; and to George Korgan and Sam Bilas, Intervening

Libelants; and to: Lillick, Geary & McHose, William A. C. Roethke, Their Proctors; and to: W. H. Hoopes, Nick Milosevich, George Korgan and Sam Bilas, Intervening Libelants; and to: Arch E. Ekdale and Gordon P. Shallenberger, Their Proctors. Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 5th day of December, A.D. 1950, pursuant to an order allowing appeal filed on Oct. 26, 1950, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause No. 8960-C, Central Division, wherein Jack Borcich, Andrew Vilicich and Bortul Zankich, co-owners of the D/V "Marsha Ann," are appellants and you are appellees to show cause, if any there be, why the decree, order or judgment in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable James M. Carter, United States District Judge for the Southern District of California, this 26th day of October, A.D. 1950, and and of the Independence of the United States, the one hundred and sixty.....

/s/ JAMES M. CARTER,

U. S. District Judge for the Southern District of California.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Oct. 26, 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Joseph Ancich, John Kaiza, Anton Bogdanovich, Peter Svorinich, Martin Miskulian, Ray Zukowski and William T. Decker, Libelants; and to: David A. Fall, Esq., Their Proctor; and to George Korgan and Sam Bilas, Intervening Libelants; and to: Lillick, Geary & McHose, William A. C. Roethke, Their Proctors; and to: W. H. Hoopes, Nick Milosevich, George Korgan and Sam Bilas, Intervening Libelants; and to: Arch E. Ekdale and Gordon P. Shallenberger, Their Proctors.

Notice Is Hereby Given that Respondents hereby appeal to the Court of Appeals for the Ninth Circuit from the final decree entered in this action on September 14, 1950.

Dated: October 26, 1950.

TRIPP & CALLAWAY,

By /s/ HULEN C. CALLAWAY,
Proctors for Respondents.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Oct. 26, 1950.

[Title of District Court and Cause.]

SUPERSEDEAS BOND

Whereas, the appellants Jack Borcich, Andrew Vilicich and Bortul Zankich, Co-Owners of the Oil Screw Marsha Ann, have filed, or are about to file, a notice of appeal and petition for appeal to the United States Court of Appeals for the Ninth Circuit to reverse or modify the final decree entered by the District Court of United States for the Southern District of California in the above-entitled cause on September 14, 1950, and to supersede said final decree; and

Whereas, the said appellants are required to give an undertaking, under seal, in the sum of \$35,-805.97 conditioned for the satisfaction of the final decree in full with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the final decree is affirmed, and to satisfy in full any modification of the final decree and such costs, interest and damages as the appellate court may adjudge and award.

Now, Therefore, in consideration of the premises and of such appeal, the undersigned, Globe Indemnity Company, a corporation organized and existing under the laws of the State of New York, and duly licensed to transact a general surety business in the State of California, does hereby undertake and promise on the part of the Appellants that said Appellants will comply with the conditions as above set forth, and does further agree that upon default by the said Appellants in any of the con-

ditions hereof, the damages and costs, not exceeding the sum aforesaid, may be ascertained in such manner as this court shall direct; that this court may give judgment hereon in favor of any person thereby aggrieved against it for the damages and costs suffered or sustained by such aggrieved party, and that said judgment may be rendered in the above-entitled cause or proceeding against it.

In Witness Whereof, the said Globe Indemnity Company has caused these presents to be executed and its official seal attached by its duly authorized attorney in fact, at Los Angeles, California, this 24th day of October, 1950.

GLOBE INDEMNITY COMPANY.

[Seal] By /s/ A. A. CHRISTIAN,
Attorney in fact.

The premium charged for this bond is \$358.06 dollars per annum.

Examined and recommended for approval as provided in Rule 8.

/s/ HULEN C. CALLAWAY,
Attorney-at-Law.

State of California,
County of Los Angeles—ss.

On this 24th day of October in the year 1950, before me, L. Hollingshead, a Notary Public in and for the County and State aforesaid, personally appear A. A. Christian, known to me to be the person whose name is subscribed to the within instrument and known to me to be the Attorney-in-Fact of

Globe Indemnity Company and acknowledged to me that he subscribed the name of the said Company thereto as surety, and his own name as Attorney-in-Fact.

[Seal] /s/ L. HOLLINGSHEAD,
Notary Public in and for Said
County and State.

My Commsision Expires May 14, 1952.

I hereby approve the foregoing. Dated this 26th day of October, 1950.

/s/ JAMES M. CARTER,
Judge.

[Endorsed]: Filed Oct. 26, 1950.

[Title of District Court and Cause.]

PRAECIPE

To Edmund L. Smith, Clerk of the United States District Court for the Southern District of California:

Come now the respondents Jack Borcich, Andrew Vilicich and Bortul Zankich, Co-Owners of the Oil Screw Marsha Ann, and designate for inclusion the entire record and all the pleadings and evidence in the above-entitled action, including:

1. The libel in rem and in personam for damages, wages and maintenance.

2. Claim of Jack Borcich, et al.

3. Intervening libel in rem and in personam for collision damages (George Korgan and Sam Bilas, Intervening Libelants).

4. Claim of Jack Borcich, et al.

5. Answer to libel.

6. Answer to intervening libel of George Korgan and Sam Bilas.

7. Stipulation for permission to file intervening libel (W. H. Hoopes, Nick Milosevich, George Korgan and Sam Bilas).

8. Intervening libel in rem and in personam for collision damages (W. H. Hoopes, Nick Milosevich, George Korgan and Sam Bilas, Intervening Libelants).

9. Pre-trial stipulation dated December 13, 1949.

10. The testimony, as taken on the part of the libelants, intervening libelants and respondents.

11. All exhibits of the libelants, intervening libelants and respondents.

12. Minute order dated May 31, 1950.

13. Opinion of Court filed July 18, 1950.

14. Findings of Fact and Conclusions of Law.

15. Minute order dated July 18, 1950.

16. Final decree.

17. Judgment dismissing third cause of action of Sam Bilas.

18. Citation on appeal, and affidavit of service thereof.

19. Supersedeas Bond.

20. Assignment of Errors.

21. Notice of appeal.

22. Petition for appeal and order allowing appeal.

23. Praecipe for the apostles.

24. All written stipulations which shall be entered into by and between proctors for the respective parties, and all orders of the United States District Court based thereon, prior to completion and transmittal of the record on appeal to the Clerk of the Circuit Court of Appeals for the Ninth Circuit.

In preparing the record to be transmitted to the Circuit Court of Appeals, the Clerk will please omit all formal captions and title, except the captions on the Libel and Intervening Libels, substituting in the case of the omitted captions the words "Title of Court and Cause" and he shall omit all verifications, substituting therefor the word "verified."

Dated: November 6, 1950.

TRIPP & CALLAWAY,

By /s/ HULEN C. CALLAWAY,

Proctors for Respondents.

Affidavit of service by mail attached.

[Endorsed]: Filed Nov. 8, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 102, inclusive, contain the original Libel; Claim of Jack Borcich, et al., on Libel; Intervening Libel of George Korgan, et al.; Claim of Jack Borcich, et al., on Intervening Libel; Answer to Libel; Answer to Intervening Libel; Stipulation and Order for Permission to File Intervening Libel; Intervening Libel of W. H. Hoopes, et al.; Dismissal of Third Cause of Action in Intervening Libel as to Sam Bilas only; Memorandum of Decision; Opinion; Finding of Fact and Conclusions of Law; Final Decree; Petition for Appeal and Order Allowing Appeal; Assignment of Errors; Citation; Notice of Appeal; Supersedeas Bond; and Praecipe and a full, true and correct copy of minute orders entered May 31, 1950, and July 18, 1950, which, together with original Libelants' Exhibits 1 to 13 inclusive, 14A and 14B and original respondents' exhibits A to N, inclusive, O-1 and O-2, and original reporter's transcript of proceedings on December 8, 9, 13, 14 and 19, transmitted herewith, constitute the apostles on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing apostles amount to \$2.80 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 4th day of December, A.D. 1950.

EDMUND L. SMITH,
Clerk.

[Seal] By /s/ THEODORE HOCKE,
Chief Deputy.

In the United States District Court, Southern
District of California, Central Division
No. 8960-C In Admiralty

JOSEPH ANCICH, JOHN KAIZA, ANTON
BOGDANOVICH, PETER SVORINICH,
MARTIN MISKULIAN, RAY ZUKOWSKI,
and WILLIAM T. DECKER,

Libelants,

vs.

D/S "MARSHA ANN," Her Engines, Tackle, Ap-
parel, Furniture, Etc., and JACK BORCICH,
et al., her owners,

Respondents.

GEORGE KORGAN and SAM BILAS,
Intervening Libelants,

vs.

Oil Screw "MARSHA ANN," Her Engines, Tackle,
Apparel, Furniture, Etc., and JACK BOR-
CICH, ANDREW VILICICH, BORTUL
ZANKICH, et al.,

Respondents,

W. H. HOOPES, NICK MILOSEVICH, GEORGE
KORGAN and SAM BILAS,

Intervening Libelants,

vs.

Oil Screw "MARSHA ANN," Her Engines, Tackle,
Apparel, Furniture, Etc., and JACK BOR-
CICH, ANDREW VILICICH, BORTUL
ZANKICH, et al.,

Respondents.

Honorable James M. Carter, Judge Presiding.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

THURSDAY, DECEMBER 8, 1949

Appearances:

Proctor for Libelants:

DAVID A. FALL, Esq.

Proctors for Intervening Libelants George Kor-
gan and Sam Bilas:

MESSRS. LILLYCK, GEARY &
McHOSE,

WM. A. C. ROETHKE, Esq.

Proctors for Intervening Libelants W. H.
Hoopes, Nick Milosevich, George Korgan and
Sam Bilas:

MESSRS. EKDALE & SHALLENBER-
GER,

G. P. SHALLENBERGER, Esq.

Proctors for Respondents:

MESSRS. TRIPP & CALLAWAY,
H. C. CALLAWAY, Esq., and
F. V. LOPARDO, Esq.,

(Other court matters.)

The Clerk: Case No. 8960-C Admiralty.

Mr. Shallenberger: Are you ready, Mr. Callaway?

Mr. Callaway: Yes.

Mr. Shallenberger: There are two preliminary matters I would like to take up, your Honor. I would like at this time to amend or to make a motion to amend the cause of action for Mr. William Hoopes.

I found at a very late date that Mr. Hoopes had engaged in gainful employment during the period of time that the boat was detained, and that he made the sum of \$500, and I would like to amend Mr. Hoopes' cause of action to show a diminution of his damages in that amount.

Mr. Callaway: There will be no objection.

The Court: All right. The order will be so made. I don't think you need to even interline the pleadings. Can't we just let the record show the amendment has been made?

Mr. Shallenberger: Yes, your Honor. It is a matter that I would have alleged had I known about it in time.

I would, also, like at this time to move that all witnesses and parties be excluded from the court

room, and only those witnesses testifying remain, and the owners of the two respective vessels be permitted to remain. I am making this motion for the reason that there seems to be a situation here in which the facts are diametrically opposed to each other. About the only fact that is not is the fact that there was a collision, and that it was a collision between these two vessels. So I make that motion at this time.

Mr. Callaway: I have no particular objection.

The Court: Counsel, who can we exclude? You can't exclude the parties, can you?

Mr. Shallenberger: We are willing that all parties be excluded except the boat owners. Is that right, Mr. Fall?

Mr. Fall: Yes.

Mr. Shallenberger: That would only be fair, in view of the fact that most of our witnesses are parties and probably most of Mr. Callaway's are not.

Mr. Callaway: I have no particular objection.

The Court: All right. The order will be made that all witnesses will be excluded except the boat owners. The boat owners are Korgan and Bilas as to the Bear, and as to the Marsha Ann Jack Borcich, Andrew Vilicich and Bortul Zankich, is that right?

Mr. Callaway: Yes, sir.

The Court: Those five people will not be excluded; all other witnesses and libelants will be excluded. I suggest you remain handy in the witness room until called. The clerk will show you where you have to remain.

Mr. Callaway: Is there anything else, counsel?

Mr. Shallenberger: No.

Mr. Callaway: At this time——

The Court: Just a moment. Have we some witnesses here, libelants?

Mr. Callaway: We will tell the ones that should leave.

(Whereupon the witnesses were excluded from the court room.)

The Court: I will leave it to counsel at all times to have the responsibility of keeping their witnesses out.

Mr. Fall: One of our witnesses went to lunch.

Mr. Callaway: At this time, if the Court please, the respondents ask leave of Court to amend the answer to the libelants and intervening libelants who I will now name, namely, Joseph Ancich, John Kaiza, Anton Bogdanovich, Peter Svorinich, Martin Miskulian, Ray Zukowski, and William T. Decker, and the intervening libelants, W. H. Hoopes, and Nick Milosevich, to set up the additional defense, separate defense, that the libel and intervening libel fails to state a claim upon which relief can be granted.

Those are the fishermen represented by Mr. Fall, and the intervening libelants represented by Mr. Shallenberger.

The Court: Any objection to the amendment to set forth that defense?

Mr. Fall: I have no objection. It is a matter that the Court would have to pass on, in the first instance, to determine whether or not they did have a claim.

Mr. Callaway: I want to put it in in that form, and then if the Court wants to hear that point of law first, we are prepared to present it.

Mr. Shallenberger: If the Court please, the only objection I would have would be one of amplification, just what Mr. Callaway intends to encompass by such defense.

The way he has stated it it is a conclusion. If it is the point that was argued at the pretrial, I have no objection.

Mr. Callaway: That is the point, Mr. Shallenberger. I haven't any additional points.

The Court: The order will be made permitting the defense to be filed.

As a matter of fact, admiralty is the same as an ordinary law suit, you can raise the same thing by objecting to the introduction of any evidence.

Mr. Shallenberger: That is why we are not objecting.

The Court: We will permit the defense to be set forth, as it were, as an amendment to the answers that you filed to the libels and intervening libels.

Mr. Callaway: Very well.

As a matter of procedure, if the court desires us to handle it in that fashion, I think it should be disposed of first. I would suggest that the libelants call one witness and have him sworn, and then we will make it in the form of an objection to the introduction of any evidence on that subject.

The Court: Let's start to argue it right now and let's assume for the record that a witness was called and you made an objection.

Mr. Callaway: Will you so stipulate?

Mr. Shallenberger: Yes.

Mr. Fall: Yes.

Mr. Callaway: Mr. Lopardo will present the legal aspect of it, your Honor.

Mr. Lopardo: Your Honor, the libel of the fishermen heretofore named by Mr. Callaway, and the intervening libel of the fishermen heretofore named by Mr. Callaway, fails to state a claim upon which relief can be granted for the following reason: The fishermen here do not allege that they own the boat that was injured, they do not allege that they owned any fish which they lost, and they do not allege any direct injury to them by virtue of this tort.

An inspection of the various libels, intervening libels and answers in this case reveal that the tort, if any, was committed against the vessel, the vessel was hurt.

The other day at the pretrial hearing the court asked me how I would phrase the question herein involved, and I read the question as follows: Can these fishermen sue for the benefit of a contract with their ship owner, which cannot be carried out, because of the alleged negligence of a third party, the respondents, who collided with the vessel belonging to the owner who hired the fishermen?

In short, do the fishermen have any cause of action for what may be called the negligent interference with their contract right?

(Whereupon the objection was argued by

counsel for the respective parties, which argument was reported by the court reporter but not transcribed, at the request of counsel.)

The Court: All right. We will continue this discussion at 2:00 p.m.

(Whereupon at 12:20 o'clock p.m. a recess was taken until 2:00 o'clock p.m. of the same day.)

Thursday, December 8, 1949, 2:00 P.M.

(Further argument on objection by respective counsel, after which the Court stated the matter would be taken under submission, and directed that the trial proceed and testimony be taken, subject to the court's eventual ruling.

The Court: All right, will you proceed?

Mr. Shallenberger: Mr. Korgan.

GEORGE KORGAN

one of the intervening libelants, called as a witness on behalf of the intervening libelants, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: George Korgan.

Direct Examination

By Mr. Shallenberger:

Mr. Korgan, you are going to have to make me hear over here, so you talk sufficiently loud and

(Testimony of George Korgan.)

sufficiently slow so that I can understand you, and then the Judge will be sure to understand you also.

The Witness: Yes, sir.

Q. (By Mr. Shallenberger): Mr. Korgan, you are the George Korgan who is one of the intervening libelants in this case? A. Yes.

Q. Speak up so I can hear you. A. Yes.

Q. Are you one of the co-owners of the vessel Bear? A. Yes, sir. [3*]

Q. Is your co-intervening libelant Sam Bilas the other owner of the Bear? A. Yes, sir.

Q. And you are equal owners? A. Yes.

Q. Calling your attention, Mr. Korgan, to the 30th day of November, 1948, were you and Sam Bilas at that time equal owners of the Bear?

A. Yes, sir.

Q. And there were no others who participated in ownership with you? A. No, sir.

Q. You were the sole owners. Mr. Korgan, on that date of November 30, 1948, did you have a collision with another vessel? A. Yes, sir.

Q. That vessel you later identified as the Marsha Ann? A. The Marsha Ann, yes.

Q. Do you know approximately what time that collision took place?

A. I would say that was around about half-past eleven.

Q. In the morning?

A. In the morning, yes.

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of George Korgan.)

Q. Where were you at the time the collision took place, Mr. Korgan? [4]

A. I was in the bunk. I was sleeping.

Q. And the collision woke you up, did it?

A. Yes. Yes, sir.

Q. At the time of the collision, Mr. Korgan, about where was your vessel proceeding?

A. We proceed to San Pedro.

Q. At the time and place of the collision how far was your vessel from San Pedro?

A. Oh, I don't know exactly, maybe a few miles. I don't know exactly, you know. I was in the bed and when I got up I don't know where we are exactly.

Q. Then, Mr. Korgan, where had you come from on this particular morning?

A. From Oceanside.

Q. By Oceanside do you mean the town towards San Diego?

A. You see, I don't know exactly. You know, we call it that. It was night, you know. All the fishermen call that Oceanside, you know, where we catch fish.

Q. But it was from a point in the ocean near the town of Oceanside?

A. Yes. More this way to the Pedro.

Q. What time, if you know, did you leave Oceanside? A. Around between 5:00 or 5:30.

Q. That was in the morning? [5]

A. In the morning.

(Testimony of George Korgan.)

Q. Of November 30th? A. Yes, sir.

Q. And at the time that you left Oceanside did you have any cargo aboard?

A. We got fish on board.

Q. All right. What kind of fish were they?

A. Sardines.

Q. And how much was there?

A. Well, there was around, we figure, 20, 21 ton.

Q. After the time you left Oceanside did you proceed direct towards San Pedro or did you stop anywhere?

A. We proceed direct to San Pedro.

Q. What is the size of your vessel, Mr. Korgan?

A. Sixty-five foot over-all.

Q. Sixty-five foot. And what is the tonnage of your vessel, that is, in cargo-carrying capacity?

A. In the cargo, around 40 ton.

Q. And that is in the hatch or above the hatch?

A. In the hatch.

Q. I beg pardon? A. In the hatch.

Q. In the hatch. Do you carry deck loads or not?

A. Yes. If we have fish, more fish than you can carry, on the deck load, too, sure. [6]

Q. How much can you carry on deck?

A. Oh, around, I figure, seven or eight ton.

Q. Mr. Korgan, when the collision occurred you woke up, you have testified. What did you do when you woke up?

A. When I heard somebody hit us I just jumped from the bunks, put my pants and my shoes and

(Testimony of George Korgan.)

went up and found the Marsha Ann right on the midship with his bow. Just I grab at his bow. I look around, somebody hollered out, two or three fellows hollered. They called me Groucho, nickname, Groucho. Then I thought somebody maybe was working on the hatch——

Q. No, no, Mr. Korgan. That last may go out as to what he thought, himself. Mr. Korgan, you just state what you saw or heard or what you did, not what you thought. A. Oh.

Q. You have testified that you got your pants on and you came up on deck? A. Yes.

Q. And you saw the bow of the Marsha Ann?
A. On the Marsha Ann.

Q. Just about midships? A. Yes, sir.

Q. To your ship? A. Yes, sir.

The Court: Which side? [7]

The Witness: Off the starboard side.

The Court: That is the right?

The Witness: The right side.

Q. (By Mr. Shallenberger): When you observed the bow of the Marsha Ann, Mr. Korgan, with relation to your ship was there or was there not any space between the bow of the Marsha Ann and the side of your ship?

A. No space at all. They was in the same hole. His bow was in the same hole in the guard.

Q. You say that his bow was in a hole in the guard. What do you mean by "hole"?

(Testimony of George Korgan.)

A. Just he was like half-moon. When he hit it bent in like half-moon.

Q. Before you observed the bow of the Marsha Ann had there been any half-moon hole in your guard rail?

A. Before, no. When he hit. He made it when he hit us.

Q. Now, you speak of a hole in your guard rail. Will you describe what the guard rail is? Tell the Court what the guard rail is.

A. The guard is about five inches, anyhow, thick, that iron bar around, and outside the iron bar we have about half-inch thick of iron all the way around the boat. You see, when he hit on that, just bent it inside, the wood and iron. [8]

The Court: Now, the guard rail is not a rail that stands up above?

The Witness: No, no.

The Court: It is a sort of band?

The Witness: A band.

The Court: Around the ship. All right, I think I understand it. It is generally about level with the deck, isn't it?

The Witness: Yes.

Mr. Shallenberger: Just a moment, your Honor. I think possibly I can show this.

Mr. Fall: If the Court please, I just noticed that Mr. Ancich came in and was sitting down here, and I just told him to leave the courtroom. He is now out.

The Court: I understand that this witness is

(Testimony of George Korgan.)

being produced on behalf of libelants and intervening libelants.

Mr. Shallenberger: No—well, yes. Yes, he is being produced on behalf of libelants, of the two sets of intervening libelants, also, your Honor.

Would you stipulate, Mr. Callaway, that his testimony both on direct and cross-examination may apply equally to all cases where it is applicable?

Mr. Callaway: So stipulated.

Mr. Shallenberger: To save time.

The Court: Didn't you gentlemen agree to draft a stipulation [9] of the things you agreed to at the pre-trial hearing?

Mr. Shallenberger: If the Court please, we all met out in the hall this morning and someone had the happy thought, is there a stipulation? Do you have one? We all opened our mouths and looked at each other and said, "Are you the one that is supposed to draw it?" Do I need to go further?

The Court: All right, let us forget it.

Mr. Callaway: Let us decide now who is going to draw it.

The Court: Now you raise that question we will give you the opportunity.

Mr. Callaway: I always open my big mouth at the wrong time. All right, we will draw it.

Q. (By Mr. Shallenberger): Mr. Korgan, I show you this picture. Put your glasses on and take a look at it.

Mr. Callaway: I will tell you, wouldn't it be easier——

(Testimony of George Korgan.)

Mr. Shallenberger: Better identify it first.

Mr. Callaway: Yes, as you go along.

Mr. Shallenberger: We will identify it first, your Honor.

The Clerk: That will be Libelants' Exhibit 1.

Mr. Shallenberger: Well, Libelants' and Intervening Libelants'.

The Clerk: If I use the term "Libelants," doesn't it apply to all libelants. [10]

Mr. Shallenberger: Certainly.

Mr. Callaway: Certainly.

The Clerk: It will save a lot of writing on it.

The Court: Is there any dispute about these pictures?

Mr. Callaway: As far as I know, your Honor, there is not.

The Court: Let us just put them in evidence and then ask any questions you want to afterwards.

Mr. Callaway: All right.

Mr. Shallenberger: Let us put them all in evidence, then. And, if the Court please, I will state for the record and for the Court's and counsel's understanding, we will have the surveyor under whose direction, supervision and control these pictures were taken. We will have him as a witness before the case is over.

The Court: How many of them are there?

The Clerk: Twelve, your Honor. Libelants' Exhibits 1 to 12, inclusive, admitted into evidence.

Q. (By Mr. Shallenberger): Now, Mr. Korgan, I ask you to take a look at Libelants' Exhibit No. 1.

(Testimony of George Korgan.)

You examine it and then I will ask you some questions.

(Witness examining Libelants' Exhibit 1.)

Q. Mr. Korgan, I will ask you a question. Looking at this picture in this fastion as though you were looking down——

A. Yes. [11]

Q. Can you identify this section which appears to have been crushed in some manner there? Can you tell me what that is?

A. This is deck. This is from the top.

Q. Right.

A. This is deck, this is bow, this is right side, starboard side, right here, ain't it?

Q. That is right. A. Yes.

Q. Can you identify this section here where it appears to have been crushed by something?

A. The Marsha Ann, he hit us right here, on this side here.

The Court: Does that show a part of the Bear?

The Witness: Yes.

Q. (By Mr. Shallenberger): All right. Is that the guard rail that you were talking about?

A. Guard rail, yes.

Q. And this was the half-moon that you were talking about? A. Yes.

Mr. Shallenberger: Indicating, if the Court please, the cross portion shown where it is obviously crushed in by something. I might state for the Court and counsel's convenience—I am not trying to testify—that that picture [12] is taken looking

(Testimony of George Korgan.)

down upon the deck from the top, showing a portion of the deck on the left, the rail and guard rail of the starboard side of the Bear.

Mr. Callaway: It obviously is that.

Q. (By Mr. Shallenberger): Now, Mr. Korgan, when you got up from the bunk and you reached the deck——

A. It was right here.

Q. The bow of the Marsha Ann was?

A. Was right in this hole here on that boat.

Q. Right into the guard rail? A. Yes.

Q. Where it is shown to be crushed in?

A. Yes, right here.

Q. And was there any space between the Marsha Ann and the place where you have indicated the bow was touching?

A. No, no space at all.

Q. Then at that time, Mr. Korgan, did you notice any movement of either vessel? A. No.

Q. In other words, was either one of the vessels moving at the time when you got up on deck?

A. No, because I come after five minutes when I got up.

Mr. Lopardo: What was that last answer, your Honor?

The Court: Read it, Mr. Reporter. [13]

(Answer read by the reporter.)

Q. (By Mr. Shallenberger): Now, then, Mr. Korgan, after you got on deck was anything said by you to anyone aboard the Marsha Ann or by anyone aboard the Marsha Ann to you?

(Testimony of George Korgan.)

A. When I come up to deck?

Q. Well, just answer me yes or no.

A. Yes.

Q. All right. Now, then, what was said?

A. They called me by nick-name "Groucho." They holler from the Marsha Ann, "Look out, Groucho. Look out, Groucho." Four or five times. Then I got scared. I don't know what they doing. I jump up the ladder, up to the pilot house, you see.

Q. All right. Was there anything else said between you and the Marsha Ann or the Marsha Ann and you at that time? Did they say anything more to you or did you say anything more to them?

A. No, just I heard them holler that what I say.

Q. At a later time, before you left the scene of the collision, was there any conversation between you and any member of the Marsha Ann?

A. No.

Q. Was there anything said by you or by any member of the Marsha Ann? A. No. [14]

Q. At the time of the collision, when you came up on deck and before your vessel was taken away from the scene of the collision, did you observe what had occurred to your vessel by reason of the collision? A. I couldn't understand you.

Q. All right. Did you look at your vessel and see what had happened to it? A. Yes.

Q. Will you tell what you could see at that time?

A. I see where the water coming in from both

(Testimony of George Korgan.)

sides. I see right away that the boat was opened up altogether.

The Court: Saw what?

The Witness: Opened up altogether.

Mr. Shallenberger: Opened up.

A. The water was come from both sides in.

Q. By "opened up" what do you mean, Mr. Korgan?

A. That is when he hit he spread the planks, you know, and this planking out, you know.

Q. In other words, it opened the seams between the planks, is that what you mean, Mr. Korgan?

A. Opened the seams altogether, yes.

Q. All right. Water was coming in?

A. Coming in, yes.

Q. On both sides of the vessel?

A. Both sides. [15]

Q. What else, if anything, did you see at that time? A. Nothing what I know.

Q. Nothing else at that time? A. No.

Q. Was the vessel taken away from the scene of the collision? Do you understand that?

A. No.

Q. All right. Did they take the vessel away?

A. Yes.

Q. Your vessel? A. Yes.

Q. How long after you got on deck did they take the vessel away?

A. Oh, about 15 minutes after?

Q. And who took it away?

A. Marsha Ann.

(Testimony of George Korgan.)

Q. Marsha Ann? A. Yes.

Q. And where did they take your vessel?

A. To the Van Camp elevator, unloading fish.

Q. The Van Camp cannery in Fish Harbor?

A. The Van Camp cannery, yes, on Fish Harbor.

Q. That is at San Pedro? A. San Pedro.

Q. And what was done at the Van Camp dock in San [16] Pedro?

A. Then we pulled for some pumps. I don't know what company bring the two pumps. They were working them both. Our pumps both working steady. We tried to unload the fish. We unload some. We lose about—I don't know, pretty hard to tell—six or seven ton, you know.

Q. Do you remember how much you unloaded?

A. Around 13 ton, I guess.

Q. You were unable to unload the balance of the fish?

A. No. So much water in the hold in the boat.

Q. Mr. Korgan, before this collision happened did your vessel leak? A. No.

Q. When was the last time before this collision happened that you had your vessel on the ways?

A. On the Tacoma, Washington.

Q. And when was that?

A. Around July sometime, in July.

Q. And that was in the shipyard?

The Court: 1948?

The Witness. 1948.

Q. (By Mr. Shallenberger): Was that in the shipyard? A. In the shipyard.

(Testimony of George Korgan.)

Q. What yard, do you remember?

A. Western Boat Builders, Martin [17] Fredericks.

Q. And at that time what was done to your vessel, if anything?

A. Nothing. He just gave me copper paint and caulk a little bit on the bow, a little caulking.

Q. In other words, you say copper paint, you mean he copper-painted the bottom?

A. Copper-painted the bottom, yes.

Q. And some caulking?

A. Yes. And another thing we had to put, we burnt the paint out and give it new paint. There were, you know, too much paint on that boat and I burn it out myself and my partner give it new paint.

Q. When was the last time before July, 1948, that the vessel was on the ways? A. In April.

Q. In April of 1948?

A. Yes. Before we go to Bering Sea, Alaska, two days before.

Q. Where was it taken out at that time?

A. I don't know exactly the day. We just doing copper-painting, that is all, and cleaned the bottom and copper-painting same like last time.

Q. What I asked, Mr. Korgan, was what place was it hauled, what place was it put on the ways?

A. On the same shipyard. [18]

Q. The same shipyard?

A. Yes, Western Boat Building.

Q. Western Boat Building Company at Tacoma?

A. Yes.

(Testimony of George Korgan.)

Q. I had thought you said you copper-painted the bottom? A. Yes.

Q. Did you do anything else at that time?

A. Nothing.

Q. When did you purchase the Bear, Mr. Korgan? When did you buy it?

A. In April, 1948.

Q. Then was it at the time you bought it that you put it on the ways the first time?

A. Yes.

Q. After you bought the Bear what did you do with it?

A. We went up to Bering Sea fishing for Government, fishing this spider crab they call them.

Q. How long did you fish in the Bering Sea?

A. Hundred days.

Q. I beg pardon? A. Hundred days.

Q. Then what did you do?

A. Then we come back down in the Puget Sound. We buying fish for 10 days. We was buying fish on the Puget [19] Sound for one outfit in Seattle.

Q. After that where did you go?

A. Then we come to San Pedro, fishing sardines.

Q. And you fished in San Pedro up to the time of this collision?

A. No, before. Before, when we come from Seattle.

Q. I don't believe you understand me. You say you came down to San Pedro and fished sardines?

A. Yes.

Q. After you came down to San Pedro, you stayed at San Pedro and fished sardines up until the

(Testimony of George Korgan.)

time that you had the collision with the Marsha Ann.

A. Yes.

Q. Is that right? A. Yes, that's right.

Q. From the time you bought the Bear to the time of the collision with the Marsha Ann had you had any collision with any other vessel?

A. No, sir.

Q. Had the Bear ever stranded or been in any accident? A. No, sir.

Q. From the Van Camp Seafood Company dock where the Bear was taken after this collision, where was the Bear taken?

A. We take her to the Harbor Boat Building.

Q. To the Harbor Boat Building Co.? [20]

A. Yes.

Q. And is that in Fish Harbor?

A. That is in Fish Harbor.

Q. Just a little ways down from the Van Camp dock? A. Yes.

Q. At the Harbor Boat Building Company what did they do? A. They put him on the ways.

Q. Was that the same day?

A. Same day, same night.

Q. And did you authorize the Harbor Boat Building Co. to do any work on the vessel?

A. No. The surveyor was there from insurance to bring the—I don't know. Michael John was on the boat. He say take him to east yard. I said, "All right, any yard to fix."

Q. And by surveyor do you mean marine surveyor or your insurance carrier?

(Testimony of George Korgan.)

A. Yes.

Q. And is it your testimony, Mr. Korgan, that you did not instruct the Harbor Boat Co. what to do? A. No.

Q. On your vessel, Mr. Korgan, how many did you have in your crew? A. 10. [21]

Q. Did that include yourself or is that besides yourself? A. That include myself.

Q. Included yourself. Did that include Mr. Bilas?

A. No, because he didn't work. He was sick at that time. He was in the hospital.

Q. He was in the hospital at the time of this collision occurred? A. Yes.

Q. Had he been fishing prior to that time during this sardine season?

A. He was fishing with us before.

Q. During this sardine season? A. Yes.

Q. So with Mr. Bilas and yourself there would be a crew of 11, is that right?

A. No, 10, because when Sam Bilas is off we take other man in his place. We always fish with the 10.

The Court: In other words, if Bilas went along there would be 10 altogether?

The Witness: 10 altogether.

The Court: Including you and Bilas. If Bilas was sick, you took another fisherman so there would be 10?

The Witness: Yes.

The Court: Always 10, okay. [22]

(Testimony of George Korgan.)

The Witness: Always 10.

Q. (By Mr. Shallenberger): How were these men paid, Mr. Korgan, when they worked for you on this vessel? A. They go by share.

Q. What share did those men get?

A. They get 32 per cent, the boat and net, and the rest of it we divided it on the shares, same share.

Q. All right. Now then, the boat——

The Court: Did you say “the boat and net”?

The Witness: Boat and net.

Q. (By Mr. Shallenberger): Got 32 per cent of the catch? A. Yes.

Q. Price of the catch? A. Yes.

Q. And the rest, the 68 per cent, was divided among the men? A. Among the 10 men, yes.

Q. Including yourself? A. Yes, sir.

Q. And Mr. Bilas when he was aboard?

A. Yes.

Q. Was that divided equally among the 10 men?

A. Equally.

Q. In other words, that 68 per cent was divided into 10 equal parts, is that right? [23]

A. Yes, that is true.

The Court: You get the same share?

The Witness: The same share.

The Court: As the other seamen?

The Witness: I get the same share.

Q. (By Mr. Shallenberger): How long had the men who were working for you at the time of this collision been working for you, Mr. Korgan?

(Testimony of George Korgan.)

A. You mean first night when we go out, we get in collision with the Marsha Ann, the first night?

Q. Do you mean the first night you went out that dark of the season. A. That dark.

Q. Had you been fishing before November 30th in this sardine season? A. Yes, sir.

The Court: I think we will take the recess at this time of a few minutes, about five minutes. Court will stand adjourned.

(Short recess.)

The Court: What did you agree on, counsel, for adjournment time?

Mr. Callaway: Well, they have got a couple of witnesses that they want to get rid of today, and we will go on with them until they finish with [24] those.

The Court: Very well.

Mr. Shallenberger: May I have the last question, Mr. Reporter?

The Court: When did the sardine season start? Is that agreed to?

Mr. Shallenberger: As a matter of law, your Honor, the sardine season at this time in California started October 1st and ended the last day of February of the succeeding year.

The Court: That would be February 28th.

Mr. Shallenberger: That is right.

The Court: That would be the legal limit?

Mr. Shallenberger: That is right.

The Court: Then I understand they only fish in the dark of the moon?

(Testimony of George Korgan.)

Mr. Shallenberger: That is correct.

The Court: Is that stipulated to?

Mr. Callaway: So stipulated.

The Court: All right.

Q. (By Mr. Shallenberger): Mr. Korgan, at the time that this collision occurred who were you fishing for?

A. We was fishing for Tomacich and Benn.

Q. And where are they located?

A. Benn is located in Burlington and Tomacich is San Pedro.

Q. And did you have any arrangement to fish for anyone [25] else?

A. We got arrangement with California Pack.

Q. You mean the California Sea Food?

A. California Sea Food.

Q. In Long Beach?

A. In Long Beach.

Q. California Sea Food Corporation?

A. That is right.

Q. What arrangements had you made to fish for them, Mr. Korgan?

A. They told us 20 ton, 20-ton limit.

Q. Did you have a definite time arranged that you were to fish for California Sea Food?

A. Yes. It was too late. They told us to go out. Like next day you come, you sign this paper, contract.

Q. Do you know what the terms of the contract were to be? Did you discuss with Cal Sea Food how long you were to fish for them?

(Testimony of George Korgan.)

A. All season.

The Court: When were you to start, the next day after the collision?

The Witness: The same day.

The Court: The same night?

The Witness: The same night, yes.

Q. (By Mr. Shallenberger): Where were you to deliver [26] the catch you had at the time of the collision? Where were you supposed to deliver the fish you had on board at the time of the collision?

A. To California Sea Food.

Q. These other two men you mention, you had been fishing for them before, is that it?

A. Before, yes.

Q. What price were you to get for the sardines?

A. First, you mean, when we were fishing before?

Q. No, when you were fishing for them.

A. I guess \$50.00. I am not sure. \$50.00.

Q. \$50.00 a ton? A. A ton.

Q. Before this 1948-1949 sardine season had you ever fished sardines? A. Yes, sir.

Q. And had you ever fished sardines in San Pedro?

A. I fished sardines in San Pedro for 12 years.

Q. Did you ever have your own vessel before you had the Bear?

A. I got eight, eight boats.

Q. You had eight boats?

A. Eight boats before.

The Court: Before you had this accident?

(Testimony of George Korgan.)

The Witness: Before I had the Bear. [27]

Q. (By Mr. Shallenberger): How long have you been in the fishing business as a commercial fisherman? A. From 1918.

Q. Mr. Korgan, had you fished before this night in this 1948-1949 sardine season? Had you gone fishing before November 30th? A. Yes.

Q. In this particular sardine season?

A. Yes, sir.

Q. And when was that?

A. Oh, that was—I can't tell you exactly day, but we was fishing three nights.

Q. There was a boat tie-up in October and part of November, was there not, Mr. Korgan?

A. Yes.

Q. And those three days you mention, was that in October before the boats were tied up?

A. Yes, sir.

The Court: What do you mean by a "boat tie-up," a strike?

Mr. Shallenberger: There was a strike, your Honor.

The Witness: Yes.

Q. (By Mr. Shallenberger): Did you catch fish on these three nights that you had been fishing in October? A. Yes. [28]

Q. How much did you catch?

A. Around 50 or 60 ton.

Q. Did you catch fish each night or did you catch that amount over the three-night period?

A. Every night.

(Testimony of George Korgan.)

Q. You caught fish every night?

A. Every night.

Q. The 50 to 60 tons, is that a total of what you caught or is that each night?

A. I guess it is a total, or each night. I don't know for sure, you know, because we get—I know money, how much we get. We get \$3,600 for our three nights.

Q. For the three nights? A. Yes.

Q. And that was for the total catch for the three nights? A. Yes, sir.

Q. Do you know how much a ton that \$3,600 represented?

A. That was \$67.50 per ton.

Q. In other words, if I understand your testimony correctly, Mr. Korgan, you were paid \$67.50 a ton for the three nights fishing in October?

A. Yes, sir.

Q. And that came to a total of \$3,600?

A. Yes. [29]

The Court: Pardon me, counsel.

Mr. Callaway: Do you want us to retire?

The Court: No. We will continue until we get the attorneys in.

Mr. Shallenberger: Do you want me to continue now, your Honor?

The Court: Yes.

Q. (By Mr. Shallenberger): In fishing for sardines you fish in the dark of the moon only?

A. Yes, sir.

(Testimony of George Korgan.)

Q. And how many days a week do you fish during the dark of the moon?

A. Oh, around 20 days.

Q. No. How many days in each week during the dark of the moon do you fish, like Monday, Tuesday, Wednesday, Thursday and Friday?

A. Yes.

Q. What days during the week do you fish when you are fishing?

A. Sunday night, Monday, Tuesday, Wednesday to Friday night.

Q. Do you go out Friday night?

A. There was that time.

Q. Saturday night is the only night, then, you do not go out? [30]

A. No. Sunday law.

Q. I beg pardon?

A. Sunday lay off, you know, with Sunday law.

The Court: Lay off.

Mr. Shallenberger: Law?

A. We stay home that night.

Q. In other words, you do not go out Saturday so that the men can be home Sunday, is that right?

A. That is right.

Q. Now, do you go out Sunday night?

A. Sunday night, yes.

Q. You go out? A. Yes.

(Interruption for other court proceedings.)

Q. (By Mr. Shallenberger): Mr. Korgan, who owns the fishing net that was being used aboard the Bear on the date of this collision?

A. I and my partner, Sam Bilas.

(Testimony of George Korgan.)

Q. And you were the sole owners of the net?

A. Yes, sir.

Q. How long, Mr. Korgan, were the members of the crew that you had aboard this vessel hired for?

A. I believe it was only two men to take, I and Nick Milosevich. They was all new fellows, you know. We hire all new. [31]

Q. Did you hire them? A. Yes, sir.

Q. How long did you hire them for?

A. We hire them for all season.

Q. By that you mean the sardine season?

A. Sardine season, yes, sir. I can't tell any other way.

Q. Mr. Korgan, when did you receive your vessel from the shipyard after this collision?

A. I believe that was in February.

Q. Do you remember what date in February?

A. No, I can't tell you what day.

Q. Well, was it approximately the 15th of February?

A. Something like that, 15th.

Q. Between November 30th, the day the collision happened, and the day you received your vessel back, were you employed at anything?

A. No, no place.

Q. You were not working anywhere?

A. No.

Q. Did you try to get work during that time?

A. I try all over but can't get no job no place.

Mr. Shallenberger: You may cross-examine, Mr. Callaway. [32]

(Testimony of George Korgan.)

Cross-Examination

By Mr. Callaway:

Q. How old was the Bear? What year was she built? A. She was built 1917.

Q. What was her gross tonnage?

A. I can't tell you exactly what is its tonnage gross, I forget.

Q. All right. What time was it, Mr. Korgan, that you went to sleep?

A. It was about 9:30.

Q. 9:30 in the morning?

A. Around 9:30.

Q. And who did you leave at the wheel?

A. Just about that time.

Q. I say, who did you leave at the wheel?

A. Let's see. Nick Milosevich.

Q. He was at the wheel? A. Yes.

Q. What was the condition of weather at the time you went to sleep?

A. When I was on the wheel it was nice and clear weather.

Q. Nice and clear. Did you have anybody stationed on the bow?

A. I don't know what you mean. [33]

Q. Did you have a man stationed on the bow of the boat?

A. There was three or four fellows at that pilot house.

Q. No, I didn't ask you that. My question is:

(Testimony of George Korgan.)

Did you designate someone to keep watch at the bow before you went to sleep? A. No.

Q. At the time you went to sleep, I take it that you changed watch, so to speak?

A. Yes, sir.

Q. You were the one aboard who did designate the respective crewmen to their posts, were you not? You told the men where to work?

A. Yes.

Q. And designated the watch?

A. Yes, sir.

Q. How many sets did you make that night?

A. I can't tell you exactly how many sets we made. You know, that is a year ago, past year. I don't know how many.

Q. In other words, you do not remember, is that it? A. I don't remember.

Q. Were you awakened by the collision?

A. When he hit. When he hit us, then I wake up. I jump right awake. [34]

Q. Well, you jumped up and put on your pants and shoes? A. Yes.

Q. And rushed up on the deck?

A. On the deck.

Q. Where did you sleep, below?

A. Down below on the forecastle.

Q. When you got up there was your engine still running? A. Engine still running.

Q. Your engine? A. Yes.

Q. Was the engine of the Marsha Ann running?

A. I don't know. I can't tell you that.

(Testimony of George Korgan.)

Q. You think it took you five minutes from the time you woke up before you got on deck?

A. Yes, four or five minutes.

Q. At that time, if I understand it correctly, the bow of the Marsha Ann was still contacting your boat in this crushed portion that is shown in the picture?

A. Yes, sir.

Q. Had not drifted apart any?

A. No.

Q. Eventually the two boats separated. I say, eventually the two boats separated from that position, did they not? Do you know what I mean by separated? Come [35] apart?

A. Come apart, yes.

Q. Eventually they did, didn't they?

A. Yes.

Q. There wasn't anything holding the bow of the Marsha Ann and the Bear together?

A. No.

Q. By that I mean no broken parts?

A. No broken parts. Just like half moon.

Q. When the boys said, "Look out, Groucho"—what do they call you?

A. They call my nick-name "Groucho," yes.

Q. They said, "Look out. Look out, Groucho," you immediately went up to the pilot house?

A. I jump right away up to the pilot house, sure.

Q. Was Nick Milosevich still there?

A. Yes.

Q. What was he doing?

A. He was holding the wheel there, you know.

(Testimony of George Korgan.)

Q. Well, by that time?

A. He talked with Jack, I guess, at that time. When I jump up there he talk with Jack.

Q. And Jack said to him in words, substance or effect, "What the hell is the matter with you guys," didn't he?

A. No, I don't heard that at all. [36]

Q. Or words to that effect?

A. I don't heard that at all.

Q. What did you hear him say?

A. I never heard nothing what he had say to Jack Milosevich.

Q. Up to that time had any of your crewmen gotten on board the Marsha Ann? A. Yes.

Q. And the Marsha Ann was throwing lines to you already, were they not?

A. I don't know. I can't tell you about that.

Q. Well, Nick backed up right alongside parallel with the Marsha Ann, didn't he?

A. No, sir.

Q. Didn't the Marsha Ann actually practically lift you out of the water and tow you in?

A. He towed us in, yes.

Q. In other words, it had to take some of your weight out of the water in order to keep you from sinking, didn't it?

A. He kept alongside. He kept us alongside. He tow us in. Our engine working just the same, because there was no water in our engine, just a little bit.

Q. Didn't they have a block and tackle?

(Testimony of George Korgan.)

A. When we get alongside to unloading, yes, but not [37] before.

Q. You mean as you were being towed in you did not have a block and tackle over you?

A. No, sir. We were coming in, then they put block and tackle on.

Q. They had lines to both your stern and bow, did they not? A. Yes, sir.

Q. Those lines were taut? A. Yes, sir.

Q. How long was it then, Mr. Korgan, after you got on deck before you backed up?

A. We don't back up——

Q. Wait just a minute, now. And they made lines fast to keep you in a position to tow you in?

Mr. Shallenberger: Just a moment, your Honor. I object to that question as assuming a fact not in evidence. The witness has already stated that they did not back up. Read the question. It is compound.

Mr. Callaway: Well, I have a right to assume facts not in evidence, of course, on cross-examination.

The Court: The objection is overruled.

(Question read by the reporter.)

Mr. Callaway: I will withdraw that and reframe it to this extent: [38]

Q. You did back up parallel along the port side of the Marsha Ann, did you not? A. No, sir.

Q. How did you get in position?

A. Marsha Ann just slide out of that hole, alongside, then he gave us line. They towed us in.

(Testimony of George Korgan.)

Q. In other words, it is your contention that the Marsha Ann changed its position, is that right?

A. No. I don't know how he slide. Maybe take him out and slide in. He come alongside us.

Q. When you got on deck and saw these two boats together in what direction was the Marsha Ann facing, what direction on the compass?

A. Right straight. When he hit us?

Q. No. You did not see that. I am just asking you about what direction the boat was when you got on deck, on the compass.

A. We going?

Q. Not what direction you were going. The direction the Marsha Ann was heading

A. I don't know what you mean.

Q. The bow of the Marsha Ann was at what point on the compass when you got on deck?

A. We going northwest.

Q. No, Mr. Korgan. My question is a simple one. Not [39] where you were going.

The Court: It may be he is trying to figure, but there is no showing he saw the compass on the Marsha Ann. He is trying to figure out which way the Bear was going and from that which way the Marsha Ann was going.

The Witness: We go to northwest and hit us right straight on the middle of the ship.

The Court: Just wait. Did you see the compass on the Marsha Ann?

The Witness: No.

The Court: Did you see the compass on the Bear?

(Testimony of George Korgan.)

The Witness: Not at that time. You know, everybody got excited, you know. Who going to look on the compass?

Q. (By Mr. Callaway): I mean do you know generally in what direction the Marsha Ann was facing at the time you came on deck, generally, generally?

A. Facing most San Clemente Island—I mean Catalina Island.

Q. All right. What direction was the Bear facing or headed? A. To the Pedro light.

Q. How long after you got on deck was it before these two ships separated from the position that you say they were in when you first saw them?

A. How do you mean? [40]

Q. How long was it after you got on deck before the Marsha Ann and the Bear separated, came apart? A. Oh, about 10 minutes.

Q. Was that effected by the use of their power or did they just drift apart?

A. Just drifted.

Q. And when the Marsha Ann came alongside or the Bear came alongside, whichever it was, was that by drifting or by the use of the power?

A. I swore that he come by drifting alongside.

Q. In other words, they just drifted alongside of you? A. Yes.

Q. And threw lines to you?

A. Yes. I heard Jack say to Milosevich, "Give me line, I tow you in."

Q. Prior to the time that you had this collision

(Testimony of George Korgan.)

had you been awakened by any signals being given by the Bear? A. No.

Q. How long, Mr. Korgan, had it been since the strike was over before November 30th, 1948—about? I am not trying to pin you down to exact time, but just approximately.

A. How long were——

Q. How long was the strike over before you went out on November 30th?

A. I don't know. [41]

Q. Approximately?

A. I don't know. I can't tell you. There was a few days, anyhow, I know.

Q. It had been over for more than a month, hadn't it?

A. Yes, I guess that would be about a month.

Q. So at that time you were fishing for the California Sea Food Corporation?

A. At that time. First night when we go out, when we get collision, we go for California Sea Food.

Q. The 1948-1949 sardine season was the worst that you have ever known since you have been fishing in San Pedro, wasn't it, from the standpoint of what anybody caught?

A. It was poor season, yes, I know.

Q. As a matter of fact you know, do you not, that shortly after November 30, 1948, the California Sea Food cannery closed down and did not take any fish from anybody?

(Testimony of George Korgan.)

A. No, that time when we made contract with them.

Q. Did you make it in writing?

A. We make it in writing. We don't sign it. He told us to go out tonight, then sign it tomorrow when you come with the fish.

Q. Have you got a copy of that?

A. I guess they have it on the cannery.

Q. That only provided that you were to fish for them from trip to trip, did it not? [42]

A. No. For a whole season.

Q. At what price did they agree to take your catch?

A. I can't tell you. About \$50.00. I know he didn't pay sixty-seven and one-half like before. I guess \$50.00, \$50.00 a ton.

Q. It is not the question of value. The price of sardines was uniform, was it not, throughout the harbor and fixed by what the seamen demanded through the union?

A. The unions?

Q. Yes. A. Sure.

Q. In other words, if the seamen who were participating in the catch could not get so much per ton for sardines, the union would not let them fish, is that right?

A. That is right.

Q. So what was the uniform price at that time in the harbor for sardines?

A. Do you mean when we go out that night?

Q. I mean what was everybody paying under the edict, we will put it, laid down by the unions?

(Testimony of George Korgan.)

A. I guess \$50.00, \$45.00 or \$50.00, somewhere around that.

Q. How long was it after November 30, 1948, that the California Sea Food Company closed down their cannery?

A. I don't know. I can't tell you about [43] that.

Q. Were you at the shipyard at the time this boat was being repaired?

A. Yes, sir, every day.

Q. Every day. They were not working on it every day, either, were they?

A. No. Sometimes it was rainy, they don't work.

The Court: Mr. Witness, speak up so the reporter can hear you.

Q. (By Mr. Callaway): Did you see the boat?

A. I saw the boat.

Q. Every day? A. Every day.

Mr. Callaway: If it is agreeable with the court, I will withdraw this witness from the stand so they can put these other short witnesses on.

Mr. Shallenberger: I was just going to suggest that.

Mr. Callaway: May I offer these four pictures for identification, with the statement to counsel that I will have the man here under whose direction they were made?

Mr. Shallenberger: Satisfactory.

The Court: We will put them in evidence.

The Clerk: Respondents' Exhibits A, B, C, and D in evidence.

(Testimony of George Korgan.)

(The documents referred to were marked Respondents' Exhibits A, B, C, and D and received in evidence.) [44]

Q. (By Mr. Callaway): Is this the appearance of the hull of the bow with the side plank decking off and new ribs put in at the time she was being repaired, that is the new ribs showing the lighter pieces of wood? Is that the way she looked?

A. Yes.

Mr. Callaway: That is all. I will withdraw this witness, your Honor, in view of the situation.

The Court: You may step down. You are temporarily excused.

Mr. Shallenberger: Call Mr. Hoopes.

W. H. HOOPES

an intervening libelant, called on behalf of intervening libelants, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please? Your name, please?

The Witness: W. H. Hoopes, H-o-o-p-e-s.

Direct Examination

By Mr. Shallenberger:

Q. Mr. Hoopes, on November 30, 1948, were you a member of the crew of the vessel Bear?

A. Yes.

Q. Speak up so we can hear you.

A. Yes. [45]

(Testimony of W. H. Hoopes.)

Q. And then everybody can hear you. No, you can sit down. Just speak up. What was your position as a crew member aboard the Bear?

A. Engineer.

Q. And do you recall a collision on the 30th of November between the vessel Bear and the Marsha Ann?

A. Yes.

Q. And where were you at the time of that collision, Mr. Hoopes?

A. I was standing on deck within about eight or ten feet of where the vessel hit us.

Q. On which side of the vessel?

A. Starboard.

Q. And where on the starboard side of the vessel were you standing? Will you identify it?

A. I was just forward amidships or halfway of the vessel under the green sidelights.

Q. How long had you been in that position prior to the time of the collision?

A. Oh, 10, 12 or 15 minutes. No set time. I couldn't set an exact time. I happened to be on deck at the time watching through the fog for approaching vessels and one thing and another.

Q. In other words, you were acting as a lookout, were you, at that position?

A. Not exactly as a lookout, except to the [46] interests of myself and the boat and the crew. While I was on deck I was looking out the same as anybody else would.

Q. What was the condition of the weather at that time, Mr. Hoopes?

(Testimony of W. H. Hoopes.)

A. The sea was very calm and it was very foggy, a visibility about 50 or 60 feet.

Q. Was there any wind? A. No wind.

Q. Was there any swell?

A. A slight swell.

Q. Where was the Marsha Ann with relation to the vessel Bear when you first saw the Marsha Ann?

A. I saw the Bear just forward and abaft of the beam at about 50 or 60 feet.

Mr. Shallenberger: May I have that answer again? A. Looking forward.

(Answer read by the reporter.)

Q. Do you mean you saw the Bear or the Marsha Ann?

A. The Marsha Ann. Did I say the "Bear"?

The Court: You did, sir.

The Witness: I beg your pardon.

Q. (By Mr. Shallenberger): Did you see how far away the Marsha Ann was at that time?

A. 50 or 60 feet.

Q. In what direction was she proceeding with relation [47] to the Bear?

A. Well, I was standing at just under the green light and she was headed right at me as near as I could figure, coming through the fog.

Q. And was the Bear in motion at the time?

A. Very little. She was under way, I imagine, a mile, a mile and a quarter, and maybe a mile and a half, but it was a very, very slow speed.

(Testimony of W. H. Hoopes.)

Q. How was she proceeding? Can you describe it?

A. Well, just kicking it in and out of gear enough to have a slight momentum. We were working our way in to the foghorn.

Q. Did you hear any signal from the Marsha Ann?

A. Well, to distinctly say whether it was the Marsha Ann or not, there were so many whistles at the time it was hard to distinguish whether the Marsha Ann was blowing or not.

Q. Was the Bear sounding any whistles?

A. Yes, the Bear was continuously sounding whistles.

Q. You say "continuously." By that what do you mean?

A. The answering whistles on the way through fog and blowing their own whistles.

Q. How often would you say the Bear was blowing its whistle?

A. Well, that being that I was not on the top side, I [48] didn't spend particularly notice of how often, but I do know that it was quite often. I should say several times a minute to three or four times a minute.

Q. Did you notice how long a blast the Bear was blowing when it did blow its whistle?

A. Well, I would say they were a regular signal for boats in a fog.

Mr. Callaway: I move to strike that out as being a conclusion of the witness.

(Testimony of W. H. Hoopes.)

The Court: It may go out.

Q. (By Mr. Shallenberger): Just tell me, if you recall, how long you believe the blasts to be that the Bear would blow?

A. Well, I wouldn't say a prolonged blast, but it was a distinct fog signal.

Q. Would you be able to estimate in matter of seconds?

A. Time? Well, I would say about one or two seconds.

Q. Did you notice whether the Marsha Ann was moving or not at the time you first saw her?

A. Yes, I did. It was moving.

Q. All right. Will you state whether she was or not?

A. She was moving.

Q. And did you form any opinion of how fast she was moving?

A. Yes. The opinion I formed was as to her speed from [49] the time that I first saw her at 50 to 60 feet we moved approximately eight to 10 feet.

Q. Well, no, Mr. Hoopes. Will you just tell me, if you formed any opinion as to her speed, what was her speed? Then if you want to explain your answer, you may.

A. Oh, I see, yes. Well, I judge her speed coming through the water. She had a wake under her on her bow, and as to the exact speed it could have been anywhere from two to six mile an hour, but I couldn't say. I couldn't state an exact speed there outside of in relationship to where it hit us.

(Testimony of W. H. Hoopes.)

Q. You state that you saw a wake at her bow. What do you mean by that, Mr. Hoopes?

A. Well, that is a water disturbance of a boat going through the water.

Q. What kind of a water disturbance?

A. Well, an object going through the water creates a wave. In other words, on each side of the bow, and we call it a wake.

The Court: You are talking to an old seaman. I used to have a job as spare fireman in the merchant marine, west coast, and I worked on the Dorothy Alexander for one whole summer as spare fireman.

Mr. Shallenberger: Very well, your Honor. I apologize for having the witness explain what a wake is. [50]

The Court: Very well.

Q. (By Mr. Shallenberger): Could you determine what color the wake was, if any?

A. Well, I would say there was a foam on it, enough wake to be a slight foam on it, because it was white.

Q. It was white? A. Yes, sir.

Q. And that was when you saw her 50 to 60 feet away, I believe you said?

A. As she was approaching.

Q. And at that time she was, as far as you could determine, I believe your testimony is, bearing on the green light of the Bear? A. Yes.

Q. Now, where did she strike or come into contact with the Bear with relation to the green light?

(Testimony of W. H. Hoopes.)

A. About eight or 10 feet further aft on the starboard rail.

Q. Did she change her course any from the time you first saw her?

A. I don't think there was a fraction of change in course nor speed, except—no, I don't think there was any change in speed or course all the way.

Q. Was there any change in the speed or course of the Bear? [51]

A. Yes. The skipper had throwed it into reverse.

Q. When did he throw it into reverse with relation to the time you first saw the Marsha Ann?

A. I imagine it was within a few seconds afterwards, because we all started hollering that there was a boat coming out of the fog, and who was doing the hollering I couldn't say, but he throwed her into reverse.

Q. Was there any other change on the Bear?

A. No, I don't know of any other change.

Q. After throwing the Bear into reverse did you notice whether the Bear responded or not to the reverse?

A. Oh, yes. She started to slow down right—in fact, she started taking right away, but sluggishly. We had a load on board.

Q. Prior to the time that the Marsha Ann struck the Bear did she actually start going backwards?

A. No.

Q. In other words, she started losing headway?

A. She was losing headway.

(Testimony of W. H. Hoopes.)

Q. But had not changed her direction?

A. She was not going in reverse. I mean the boat was not going in reverse, the engine was.

Q. Now, then, when the Marsha Ann struck the Bear what part of the Marsha Ann struck the Bear?

A. The bow stem of the Marsha Ann. [52]

Q. And will you describe how it struck and what occurred right immediately after?

A. The bow of the Marsha Ann struck the guard rail of the Bear approximately amidships, just slightly aft of amidships, and mashed the guard into the hull of the boat.

Q. Then what occurred, if anything?

A. Well, right away, the boat was still—I mean the boat was still stuck in our bow and she still shoved us sideways until the momentum of the both boats died completely, and then the boat merely swung around to our starboard, to his port rail, and we still hung onto the two boats.

Q. You said after she hit she was shoving you sideways. You mean the Bear was traveling sideways after the impact?

A. The impact of this heavier boat, she was still going sideways after she was hit.

Q. How long did that motion continue, if you have any idea?

A. That I couldn't say too strong on just how far it happened, because as soon as I got my wits about me I ran down to the pump to see whether we were taking water or not.

(Testimony of W. H. Hoopes.)

Q. Did you notice whether the Marsha Ann had any lights on her?

A. I don't recall of any lights on the Marsha Ann.

Q. You mean you do not recall whether she did or not? A. Did or not, no. [53]

Q. Did what?

A. I don't recall whether she had a light on or not.

Q. Did the Bear have any lights on?

A. The Bear's lights, all of her running lights, were on.

Q. When you say all of the running lights what do you mean?

A. I mean the sidelights, the masthead, and the mast light.

Q. After the collision did you overhear any conversation or any remarks from anyone aboard the Marsha Ann?

A. Well, most of the talk was in Slav. One English expression I heard right off the boat was that who I took to be the skipper. He was on the bridge of the Marsha Ann. I don't know him. As I remember, he called that he saw us as he was approaching in his radar.

Q. You don't know who the man was that said that?

A. No, I couldn't tell you. There was one or two men on the bridge and the one that was doing the talking I took to be the captain.

Q. Did the Bear have radar, Mr. Hoopes?

(Testimony of W. H. Hoopes.)

A. No.

Q. Mr. Hoopes, were you employed aboard the vessel Bear on a share system?

A. On a share system. [54]

Q. What share did you get?

A. Well, the crew is split up into equal shares after your boat share is taken out. And, if I remember right, it was 33, or just about one share, 33 or 34 per cent for the boat and net, and then it is shared up equally amongst the fishermen.

Q. And you received an equal share with the rest of the crew? A. Yes.

Q. Drawing your attention to the date of November 30th, to approximately the date of February the 15th, 1949—November 30 of 1948—were you employed during that period of time?

A. Yes, part of the time.

Q. And where were you employed?

A. At the boat works where the Bear was on the ways.

Q. And what did you receive as compensation during that time?

A. Well, without going back and looking it up, I would make a rough guess at around \$500.

Q. But it was the Harbor Boat Building Company, was it? A. Yes.

Q. Did you work anywhere else during that time? A. No.

Q. Do you recall when you started to work at the [55] Harbor Boat?

A. The accident occurred on the 20th?

(Testimony of W. H. Hoopes.)

Q. 30th of November.

A. It was about three or four days later.

Q. During that interval of time had you attempted to seek any other employment?

A. Oh, yes. I was down, figuring on trying to get on another boat for the rest of the dark, and then I had been told that I might be able to get on at the yard. So I went down and tried to get on at the yard.

The Court: How long did you work at the Harbor Boat Yard?

The Witness: I worked there right until our boat was back in the water, which was in—I can't tell you the date that we got out of the yard—approximately a little less than three months.

Mr. Callaway: We cannot hear the witness, your Honor.

Mr. Shallenberger: I cannot, either.

(Answer read by the reporter.)

Mr. Shallenberger: You may cross-examine, Mr. Callaway.

Cross-Examination

By Mr. Callaway:

Q. Was anybody on the bow of the boat at the time that you first saw the Marsha Ann, anybody on the bow of the boat at the time you first saw the Marsha Ann? [56]

A. Of which boat?

Q. Of the Bear.

(Testimony of W. H. Hoopes.)

A. That I wouldn't say. I wasn't on the bow. The men that I know were on topside, on the top of the pilot house.

Q. Who was at the wheel?

A. The captain, Capt. Milosevich.

Q. Sir?

A. Not the captain. That is our fishing boss, Milosevich.

Q. Was anybody in the pilot house with him?

A. They were on top of the pilot house. We have what we call topside controls and we are right out in the open on top of the pilot house with a lot of goldbricks around you. You have a vision all around you from that station.

Q. Who was it that was up there?

A. Well, let's see. Milosevich.

Q. Who? A. Milosevich.

Q. He was the guy at the wheel, wasn't he?

A. At the wheel, and there was the cook was on topside, Ancich.

Q. What is his name? A. Ancich.

Q. Ancich? [57]

A. And I think Tony Bogdanovich was on top-side.

Q. Anybody else?

A. And Martin—I can't pronounce his last name. You will have to help me out there. I can't pronounce it myself.

Mr. Shallenberger: Miskulian?

A. Miskulian, yes. And I think there was one

(Testimony of W. H. Hoopes.)

more man up there. I think Johnny Kaiza was on topside.

Q. (By Mr. Callaway): Mr. Korgan stated that you had been fishing off Oceanside, is that about right? A. Yes, on the Oceanside area.

Q. Right in there, yes. A. Yes.

Q. And that he left there from 5:00 to 5:30, is that right? A. Approximately.

Q. When you came towards San Pedro where was it that you ran into the first fog, if you know?

A. The first fog we ran into was somewhere off of the Newport area.

Q. Some place off Newport you ran into the first fog?

A. But there was more of a light fog. The closer we got to the breakwater, the foggier it got.

Q. In other words, it started out being a light fog and the closer you got to the breakwater, the more dense it became? [58]

A. That is right.

Q. Prior to the time that you reached Newport about what speed was the Bear traveling?

A. I would say between eight and eight and one-half.

Q. Miles or knots?

A. Knots. We don't use miles in the ocean.

Q. You referred to it in your direct testimony as miles. A. Miles is nautical.

Q. You mean nautical miles? A. Yes.

Q. All right. And when you reached Newport,

(Testimony of W. H. Hoopes.)

where you first ran into this fog, was your speed reduced any?

A. Not right away, because we still had a clear visibility. I can remember of fair visibility until we were off of Seal Beach breakwater, out from Seal Beach. So we didn't—

Q. You had fair visibility until you got to the Seal Beach breakwater?

A. Yes. From there it started dropping down very heavy.

Q. Was there a reduction in speed made when you were off the Seal Beach breakwater?

A. Well, being that I wasn't on topside at the time, I wouldn't say when the exact slow-down was. Because from there on in—

Q. You could tell? [59]

A. —they started cutting their speed down.

Q. You could tell from the motor. You were down in the engine room, weren't you?

A. Yes. But still, when I am down there, I am not on topside even half of the time to know what they slow down for.

Q. I understand. Anyway, how long had they been traveling at this pace of what you say was one to one and one-half nautical miles per hour?

A. Until somewhere between Newport and Seal Beach.

Q. When did they start traveling at that slow speed? A. I wouldn't say.

Q. Approximately? A. I don't know.

(Testimony of W. H. Hoopes.)

Q. How long had you been on deck before this accident happened?

A. Before the actual accident?

Q. Yes. A. 12 or 15 minutes.

Q. Well, had they been traveling during that 12 or 15 minutes at——

A. No. They were traveling at a very slow speed. At that time the visibility——

Q. Wait a minute, now. Let me finish my question. You don't know what I am going to ask you yet. Were they [60] traveling during that 10 or 15 minutes at from one to one and a half nautical miles per hour? A. Yes.

Q. In what direction on the compass, approximately, was the Bear headed when you first sighted the Marsha Ann? A. I wouldn't know.

Q. What was the gross weight of the Bear?

A. I don't know.

Q. Did you go back to work on her after these repairs were effected?

A. I also made a trip to Alaska and back in her, and I still don't know what her gross weight is.

Q. How long had you been working as a crew member on the Bear before the incident in question?

A. A couple of months—no, that was not a couple of months. It was about—let's see—nearly all of November.

Q. You had only fished three nights in November, hadn't you, before this happened?

A. It was right after they finished that three nights that I went on the boat. The other engineer

(Testimony of W. H. Hoopes.)

went north. He was a Seattle or a Tacoma boy. And that is when I went on the boat.

Q. Then this was the first trip you had made?

A. Yes.

Q. During that particular sardine season?

A. Yes. [61]

Q. My question is: Did you work on the Bear afterwards? A. Yes.

Q. Were you on it when she sunk?

A. No. I was off about—oh, I should judge right around a month before she went down.

Q. What did you say to the helmsman at the time you saw the Marsha Ann bearing down about 50 to 60 feet away, headed right towards the position at which you were standing on the starboard side?

A. It happened so quick, what statement I made I wouldn't be able to say. I do remember of hollering to one of the men that was working on the net table on the rear. I hollered at Pete, Peter Svorinich, because he was on the offside and I was afraid he would get knocked in the water. And I hollered to Pete to look out, to hang on, there was a boat going to him him, as far as I remember. I don't know if I said anything to him at all or not, but I did holler at Pete Svorinich.

Q. How much time elapsed, Mr. Hoopes, between the time that you first sighted the Marsha Ann and the actual impact?

A. It couldn't have been very long, seconds.

Q. I didn't ask you that.

(Testimony of W. H. Hoopes.)

A. I know. You are asking me——

Q. I asked you how long it was.

A. I have no way of figuring that out. [62]

Q. Well, give me an approximation of the amount of time that elapsed.

Mr. Shallenberger: I object to the question as argumentative. He said he had no way of telling.

A. That is something I can't answer.

Q. (By Mr. Callaway): Have you no recollection as to the amount of time that elapsed from the time that you saw the Marsha Ann, first sighted her, and the actual impact?

A. Yes, sir. I have in my mind, but to give you a time, a set time that it took to make it, I can't do it.

Q. Let us have it understood that I am not expecting you to give me an answer to project on a stop-watch proposition. I am only asking you for your best estimate as to the amount of time.

Mr. Shallenberger: I would object to the question, your Honor. I think that this is argumentative. He has answered every way possible that he could not estimate it in measurements of time.

The Court: Well, we will let him answer once more. Objection overruled.

Mr. Callaway: Read the question back to him.

(Question read by the reporter.)

A. Well, I would say, just to make it rough and give you an idea, we will say about 10 seconds.

Q. About 10 seconds. Well, you knew, did you

(Testimony of W. H. Hoopes.)

not, [63] Mr. Hoopes, that if the Bear would increase its speed, the accident could be avoided, did you not?

A. No, I don't think so. At the speed we were going, I don't think we could have got out of the way in time. If we had of, it would be worse, it would have hit us in the steering instead of amidships.

The Court: Of course, that is argumentative, because he was not at the wheel.

Mr. Callaway: Yes, I agree with you, your Honor.

Mr. Shallenberger: I am willing that the answer remain.

The Court: It would not help me decide the case.

Mr. Callaway: Sir?

The Court: It would not help me decide it one way or the other.

Q. (By Mr. Callaway): How long did these two boats remain in contact with each other after the impact?

A. Well, in my own way I can draw a picture of it, I think, if you let me explain my own way of it.

Q. I am not asking you about the position. I am just asking you about the length of time that they remained in contact with each other.

A. You are getting down now to where it is pretty hard for me to make that time estimate.

Q. Do you have no recollection of the amount of

(Testimony of W. H. Hoopes.)

time in which they remained in contact before they drifted apart? [64]

A. They never did drift apart.

Q. How long, then, did they stay in contact with each other?

A. Well, the Bear at the time had a forward momentum.

Q. No, no. My question is very simple. How long did they stay this way before they eventually were parted or did part?

Mr. Shallenberger: If you know, Mr. Hoopes.

A. That is what I am trying to explain to you, if you will let me explain in my own way.

Mr. Callaway: All I am seeking from you is the length of time.

A. Because at the time of the impact the boat was gradually moving back until it was portside to the Bear, and there was no set time it was just like that. It never did stay like that.

Q. How long before the two boats parted?

The Court: It has been asked and answered enough.

Q. (By Mr. Callaway: One time they were in this position and eventually they got into that position (illustrating), is that right? A. Yes.

Q. At that time I take it the bow of the Bear was ahead of the bow of the Marsha Ann?

A. Right. [65]

Q. Was that corrected and were they brought together before the Bear was towed in?

A. Yes. The Marsha Ann come alongside then.

(Testimony of W. H. Hoopes.)

Q. How was that effected, by power or drifting?

A. No, that was by pulling the two boats together, that is, man-handling it together.

Q. You mean by manpower?

A. Yes, manpower.

Q. Lines thrown from one to the other and the boats pulled together in that fashion?

A. That is right, and pushing the boats together.

Q. After the collision, immediately after, was the Bear's motor or engines turned on?

A. The engines on the Bear never did stop.

Q. How about on the Marsha Ann?

A. They work together from the time they left the place of the accident.

Q. No. But I mean right after the collision, immediately after, was the engine on the Marsha Ann running? A. I don't know.

Q. How were the two boats made fast before?

A. The Marsha Ann—we put a sling on the Bear and we lashed to their boom to take care of the weight.

Q. In other words, the Marsha Ann was practically, at least, bearing some of the weight of the Bear? [66] A. On the way in.

Q. On the way in.

A. When they were tied together.

Q. With a tackle and sling and line at the bow and the stern? A. Yes.

Q. Did you go aboard the Marsha Ann?

A. No.

Q. How long did you remain there at the scene

(Testimony of W. H. Hoopes.)

of the collision before the two boats were made fast to each other?

A. It couldn't have been very long, because we were taking water so fast we had to get in.

Q. Only a matter of a few minutes, wasn't it?

A. That is right.

Q. Right now?

A. Just a matter of a few minutes.

Q. Did you examine the stem of the bow? Did you examine the bow stem of the Marsha Ann after the collision? A. No.

Q. To pay any attention to it? A. No.

Q. Did you hear Capt. Borcich yell following the collision, say in words, substance or effect to the helmsman of your boat, "What the hell is the matter with you? Are you crazy?" or words to that effect? [67]

A. Not to my recollection, no.

Q. Using these two little boat models, isn't it true, Mr. Hoopes, that at the time of the collision the Marsha Ann—first, I will ask you this: The Marsha Ann is the larger and much larger of the two boats, is it not?

A. By two or three times.

Q. Two or three times as big. All right. Now, isn't it true that at the time of the collision the Marsha Ann was headed in a somewhat southeasterly direction, but in still water, and that the Bear came along and hit her somewhat in this fashion that I now hold the boats? A. No.

(Testimony of W. H. Hoopes.)

Mr. Callaway: Can we put this in evidence?

Mr. Shallenberger: Yes.

The Court: Respondents' next in order.

The Clerk: Respondents' Exhibit E in evidence.

(The document referred to was marked Respondents' Exhibit E and received in evidence.)

Q. (By Mr. Callaway): I will ask you this question: Did the Bear veer her course either to port or starboard from the time you first sighted the Marsha Ann up to the point of collision?

A. No.

Q. I will show you a photograph of the starboard side of the Bear, showing the point of impact. Do you see it? [68]

A. (Witness examining photograph.)

Q. Now, how do you account for the fact that the "V" or the indentation that is made is shorter on the stern side and longer on the bow side if the boats were not in the position that I have just indicated?

A. Can I put that in my own words?

The Court: Yes, sir.

A. I can do it easier. That is exactly the way, their positions that I was describing. I was standing. The green light is just above this ladder on the top side——

Mr. Shallenberger: Keep your voice up.

A. ——of the bridge. The Bear was thusly. As to north, south, east or west, when you are in a fog,

(Testimony of W. H. Hoopes.)

as far as I am concerned if I am not watching the compass, I don't know which direction we were going, outside of that we were headed in the direction of approximately west to north, in between west and north, on account of this direction the swells were coming in. So we will say the Bear is here and when I first saw the Marsha Ann from this point, he was approximately 60 feet in this direction and I was standing approximately here. And while he kept right on coming, and from the time I first saw him until we got over here, we traveled about eight or 10 feet, and that is where our momentum, a mile to a mile and a half, would account for this much slide on the rail. [69]

Q. (By Mr. Callaway): All right. Let me ask you this question: In other words, the Bear traveled 50 to 60 feet while you traveled from eight to 10, is that right?

A. You got the answers. And then the crash.

Q. I see, and you are right? A. Yes.

Q. Let me ask you this question: How much did you get per hour when you worked at the Harbor Boat Works?

A. \$1.42, I think, or somewhere near that.

Q. And you only worked on the Bear—

A. No, no. I worked in the yard.

Q. Oh, I see. In other words, you were not confining your work to the Bear? A. No.

Mr. Callaway: That is all.

(Testimony of W. H. Hoopes.)

Redirect Examination

By Mr. Shallenberger:

Q. Mr. Hoopes, when you first saw the Marsha Ann at the time of the collision did you observe anyone on her bow?

A. Not on the bow. On the topside, on her top-side bridge.

Q. Where the controls are? A. Yes.

Q. But nobody on the bow? A. No. [70]

Q. From the time you first saw her until the time of the impact did you observe anybody on the bow? A. No.

Q. Mr. Hoopes, did the Bear sink or burn?

Mr. Callaway: I assume that that would call for hearsay. He said he was not there.

Mr. Shallenberger: I don't know. You asked him if he was aboard when it sunk and he said, "No."

Mr. Callaway: If he was not there, he would not know.

Mr. Shallenberger: I mean you inquired into it and I was just asking.

The Court: What has this got to do with the case?

Mr. Callaway: Nothing.

The Court: Was this some later occasion the Bear was lost?

Mr. Callaway: Yes. It has nothing to do.

Mr. Shallenberger: It is relatively unimportant.

(Testimony of W. H. Hoopes.)

I don't know why Mr. Callaway went into it, but I was just going to ask. That is all.

The Court: Step down, Mr. Hoopes.

Mr. Shallenberger: This next witness will only take about five minutes. I mean with cross-examination, even.

Mr. Fall: This man is going to leave tonight for Hueneme.

Mr. Callaway: What will he testify to? Maybe I will [71] stipulate to it.

The Court: Now we are making progress.

Mr. Fall: It will only take five minutes.

The Court: Let us hear what he will testify to. What is his name?

Mr. Shallenberger: William Decker.

Mr. Fall: If he were called, he would testify that he was below, sleeping, at the time of the collision; that he came up on topside within two or three minutes.

Mr. Callaway: Have you got a statement from him?

Mr. Fall: I have a statement, yes.

Mr. Callaway: Let me see it. Maybe we can just put that in.

Mr. Fall: There are some things here. The fish boat Marsha Ann had her stem hard against our starboard side just amidship, and we were taking some water. We had about 15 to 20 tons of sardines aboard and were on our way to the cannery at Terminal Island to unload. When we came on deck we found we were in a dense fog. Our run-

(Testimony of W. H. Hoopes.)

ning lights were on and running lights on the Marsha Ann were not burning. There was, of course, some discussion of the accident and we definitely heard someone from the Marsha Ann say they, those on the Marsha Ann, had seen us on their radar set before the accident. We don't know the——

The Court: Well, you had better get him up here. [72]

Mr. Shallenberger: That is all?

Mr. Fall: Well, with the exception that he will testify, too, that the Bear was pushed sideways for a period of minutes before the Marsha Ann came up along parallel to the Bear.

Mr. Callaway: Oh, I will stipulate he would so testify if he was called.

Mr. Fall: That he will testify further that with reference to light——

Mr. Callaway: You had better be satisfied. I might withdraw my stipulation.

Mr. Fall: Well, this must be in. That he attempted to get other employment during the period of time that the Bear was laid up for repairs, but he was not able to get employment. The reason was that other men had been employed for the season and there was no opening.

Mr. Callaway: Oh, I will stipulate he would so testify if he was called. So stipulated, that if he was called he would so testify.

Mr. Fall: So stipulated.

(Testimony of W. H. Hoopes.)

The Court: At least he was not an eye witness.

Mr. Callaway: No.

The Court: All right, so stipulated. Can we take an adjournment at this time, then?

Mr. Fall: I think so, your Honor. [73]

The Court: Do you want to start at 9:30 or 10:00 tomorrow, gentlemen?

Mr. Callaway: If your Honor please, if there were any hope of finishing this thing tomorrow, I would say 9:30, but it is just hopeless.

The Court: Very well, 10:00 o'clock tomorrow morning.

(Whereupon, a recess was taken until 10:00 o'clock a.m. of the following day, Friday, December 9, 1949.) [74]

Friday, December 9, 1949, 10:00 A.M.

(Case called for further trial.)

Mr. Shallenberger: Do you want Mr. Korgan to resume the stand?

Mr. Callaway: I will call him back later.

The Court: Mr. Reporter, can you read that stipulation as to what this witness will testify to that we hurriedly went over last night?

(Record read by the reporter as requested.)

Mr. Callaway: Your Honor, I have a model of a fish boat here a little different from others, so we get some idea of the pilot house and the way it is built.

The net, as you see, hangs off the back and when

(Testimony of W. H. Hoopes.)

they get on a school of fish, they put a man off in this skiff and let a net out and circle around this until they get back in the dory, and then pick up the net and purse it like a purse, and then the fish are immediately brailed out of the net. The net and the fish are not actually brought aboard the boat. They have a big brail or dipper they drop, and they dip down in the net and dig down in the fish and drop it over there.

I thought it might be interesting to you to give you some idea of how these boats are constructed.

The Court: It seems to me the Bear was about 60 to 70 feet in length? [76]

Mr. Callaway: That is right.

Mr. Shallenberger: 65.

The Court: How long was the Marsha Ann?

Mr. Callaway: Almost a hundred, 97.

The Court: But the general construction of both boats——

Mr. Callaway: Was generally the same.

The Court: ——was generally the same. I mean there might be a difference in the cabin arrangement or one thing and another. Both of them had an open topside where the——

Mr. Callaway: No.

The Court: I thought there was testimony that there were people—skip it. As far as the Bear was concerned, however, the pilot who steered the boat was out in the open?

Mr. Shallenberger: That is the testimony.

(Testimony of W. H. Hoopes.)

Mr. Callaway: That is the testimony, I understand.

Mr. Shallenberger: In other words, the testimony is that he was out here on this flying bridge where it shows a wheel on this vessel.

The Court: All right.

Mr. Callaway: In other words, if I understand it correctly, I think you can either be out here on this flying bridge or you can be inside. Is that right? You can steer it from the outside on the flying bridge as well as inside.

The Court: You are talking about the Bear or the Marsha Ann? [77]

Mr. Shallenberger: No, no, not about the Bear.

Mr. Callaway: In other words, as I understand it, the Bear does not have this little pilot house up here, but this has the open flying bridge.

Mr. Shallenberger: The flying bridge, that is right. There is variation in those respects as to the different vessels. Your later vessels have more superstructure in that connection.

The Court: All right, proceed. Do you want to call Mr. Korgan again?

Mr. Shallenberger: I think Mr. Callaway wants to recall him later.

Mr. Callaway: I may not have any questions for him.

Mr. Shallenberger: I will call my next witness. Mr. Milosevich.

NICK MILOSEVICH

one of intervening libelants, called as a witness on behalf of intervening libelants, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Nick Milosevich.

Direct Examination

By Mr. Shallenberger:

Mr. Milosevich, keep your voice up when I ask a question so all of the counsel here can hear, and in that way, also [78] the reporter and the judge will be able to hear everything you say and clearly.

Q. Mr. Milosevich, what is your occupation?

A. Fisherman.

Q. How long have you been engaged as a fisherman?

A. From 1910.

Q. Is that as a commercial fisherman?

A. Yes, commercial fisherman. Yes, sir.

Q. And where have you been engaged as a commercial fisherman?

A. I was engaged around Seattle, Puget Sound, Alaska, California, all over to the Mexico.

Q. Have you during the course of your occupation as a commercial fisherman, been a boat owner also?

A. Yes.

Q. And have you acted as a master?

A. Yes.

Q. Of a fishing vessel?

A. Yes.

Q. Now, then, Mr. Milosevich, on calling your

(Testimony of Nick Milosevich.)

attention to November 30, 1948, were you engaged as a commercial fisherman aboard the vessel Bear?

A. Yes.

Q. Do you recall the circumstances of a collision between the vessel Bear and the vessel Marsha Ann? [79]

A. Yes.

Q. On that date?

A. Yes.

Q. Calling your attention, Mr. Milosevich, to the time prior to the collision, before the collision, where was the Bear when it started out that morning?

A. We was in the vicinity around the Oceanside, some place around there close.

Q. What time did you start on your way towards San Pedro?

A. Oh, it is around about 5:30.

Q. And at that time who was at the wheel?

A. Mr. George Korgan.

Q. And he is the owner of the vessel?

A. Yes.

Q. Do you know what the condition of the weather was at the time you left Oceanside?

A. It was clear weather and calm.

Q. Did you later take the wheel yourself, Mr. Milosevich?

A. Yes, I traded George.

Q. About what time?

A. About, I should judge, around about 9:00-9:30.

Q. And at that time do you recall what compass heading the vessel was on? [80]

A. George have 295 degree on the compass and I was proceeding same course.

Q. You were proceeding the same course as what

(Testimony of Nick Milosevich.)

the vessel was on when the wheel was turned over to you, is that right? A. Yes.

Q. Did you change that course any?

A. No.

Q. Between the time you took the wheel and the time of the collision?

A. No, we didn't. We was keeping the same course.

Q. Were you on the wheel from 9:30 until the time of the collision? A. Yes, I was.

Q. And did you have the wheel at the time of the collision? A. Yes.

Q. Did you stop anywhere from the time you took the wheel to the time of the collision?

A. I slowed down. Shall I explain it my way?

Q. Well, no. I just asked you if you stopped anywhere. A. I didn't stop on the way.

Q. All right. In other words, you pursued your course? A. Yes, for lighthouse.

Q. Directly to where the collision occurred, is that [81] right? A. Yes.

Q. Will you describe the weather at the time you took over the wheel at 9:30?

A. Yes, I can.

Q. All right, will you do so?

A. When I take wheel 9:30 was nice and clear, and when we came outside Seaside start the beginning of the fog, little, you know. She wasn't very thick at that time. And farther we was going to lighthouse, she was coming thicker. Then we slowed down half speed at that time, at first.

(Testimony of Nick Milosevich.)

Q. Where was it that you first sighted the fog?

A. Off by Seaside, outside Seaside they call that little town right there, about eight or nine miles to lighthouse of entrance of San Pedro.

Q. Do you mean Seal Beach, Mr. Milosevich?

A. Seal Beach, yes. That is about eight miles to San Pedro lighthouse.

The Court: I think there is a place down there called Seaside, too.

Mr. Shallenberger: I had never heard that one, your Honor. That is why I asked.

The Witness: That Seaside, that is the hotel, that is hotel.

Q. (By Mr. Shallenberger): At that time you encountered [82] fog. Was that fog heavy or light or what was the condition of it?

A. When we hit the fog she was pretty light. You can see a mile.

Q. The visibility was a mile?

A. A mile, the visibility.

Q. As you progressed up the coast did the fog get lighter or denser?

A. She was getting thicker.

Q. And did your visibility decrease as the fog got thicker?

A. Visibility, we couldn't see more than a hundred yards at that time, again. You know, she was coming thicker and thicker and thicker all the time, you know.

Q. All right. Now, then, I believe you stated that you reduced speed. About when did you reduce

(Testimony of Nick Milosevich.)

speed with relation to when you first saw the fog?

A. I reduced the speed around about, I should judge, around about 10:30, pretty close to 11:00 o'clock. I reduced to half speed.

Q. You reduced it to half speed?

A. Yes, half speed.

Q. And about what is half speed?

A. Oh, around about, I should judge about four mile an hour, four and one-half most. [83]

Q. By four and one-half miles an hour do you mean nautical miles? A. Nautical.

Q. Or shoreside? A. Nautical miles.

Q. Did you again reduce speed prior to the collision? A. Yes.

Q. And when was that?

A. When we heard some boats was start to blow whistle. They was maybe three or four hundred yards from us, some left of us, some right of us, some front of us. So we come down to speed around about two mile an hour.

Q. Did you have any men posted on the bridge with you?

A. Yes. I had, I think, three men with me on top all the time when we hit the fog.

Q. Who were those men and where were they?

A. Mr. Miskulian and Mr. Bogdanovich, and I know Cook was up and—I don't know his name.

The Court: Is the cook's name Ancich?

The Witness: Ancich was cook. He came up at same time. Kaiza—I don't know if that is his right name, Kaiza. I know three men and Cook came up.

(Testimony of Nick Milosevich.)

Q. (By Mr. Shallenberger): All right. Did you give those men any duties to perform that were up there with you? A. Yes. Yes, because—

Q. State what duties you gave to what crew member.

A. I gave it to crew. I said—two of us always stay three hours on the wheel, you know, two at a time. And sometime when the fog was up, one fellow, he didn't want to sleep because on account of fog, so I told them all to be on the lookout. So I think five of us, five or six of us up all the time, including engineer, you know. And we was watching, and Mr. Miskulian was on the wheel. He was blowing whistle, supposed to be done three or four times a minute.

Q. That was Mr. Miskulian?

A. Miskulian, yes.

Q. Where was he blowing the whistle? Where was he blowing the whistle? Where was he on the boat? A. He was alongside of me.

Q. Which side of you? A. Left.

Q. What kind of a whistle was he blowing?

A. He was blowing air whistle what we use on the boat.

Q. And how is that air whistle run?

A. You mean how she blows?

Q. No. What makes it run? A. Air.

Q. All right. And how is that air generated?

A. We got the little pump down in engine room to fill up the tank. [85]

Q. In other words, the air horn is not operated

(Testimony of Nick Milosevich.)

with the hand to supply the air, it comes from the engine, is that it?

A. It comes from the engine, yes, sir. We got a little engine to do that.

Q. And who else was on the bridge with you?

A. Mr. Bogdanovich, he was up——

Q. And where was he?

A. He was just on the right side of me. He was leaning on a big box what we keep supply ropes, all these things. He was leaning on the big box watching outside. That was the starboard side of the boat.

Q. Had you posted any men down on the deck of the boat?

A. One, and they was working around the nets. That was—I don't know what his name is. Just a minute, I can't recall his name now. Svorinich. I know it is Svorinich. I don't know his first name. Svorinich.

Q. Peter Svorinich?

A. He was working around the net at the stern.

Q. And did you have any other men posted on the deck, Mr. Milosevich?

A. Kaiza was up with me, too. He was just on the—just behind Mr. Bogdanovich.

Q. No. But on the deck were there any others?

A. Don't have to be on deck, because there is a pilot [86] house right in front by the bow.

Mr. Callaway: I move to strike that out as not responsive.

The Court: It may be stricken.

(Testimony of Nick Milosevich.)

Mr. Shallenberger: Just listen to the question.

Q. Did you have any other men on the deck of the Bear? A. No.

Q. Do you know where the engineer was, Mr. Milosevich?

A. Engineer was going down in engine and come out. He happened to be on the deck at that time when both hit, because he saw the boat first, I think. Marsha Ann was coming to us.

Q. Now, when did you first see the Marsha Ann, Mr. Milosevich? A. I can't understand that.

Q. All right. Did you see the Marsha Ann before the collision?

A. I see her about 40 or 50 feet from us.

Q. Before the collision?

A. Before the collision, yes.

Q. And at that time what did you do?

A. We was idling. We didn't go ahead at all. Maybe about a mile an hour on that speed, but I think was stop and go and stop, you know, account of lots of boats around.

Q. All right. Now, you were going stop and go?

A. Yes. [87]

Q. About a mile an hour?

A. About a mile an hour. That is all I can figure.

Q. When you saw the Marsha Ann what did you do, if anything? A. What did I do?

Q. Yes, when you first saw it.

A. I can't do nothing. I tried to back up the boat to clear, because she was going toward us, to hit us

(Testimony of Nick Milosevich.)

on the quarter of the bow right there, on the green light, if he was staying still. We was proceeding a mile and she hit us maybe about 10 feet below that toward the stern.

Q. All right, you tried to back up. What did you do to try to back up?

A. To clear her, you know, so——

Q. No. What did you do to try and back the vessel up? A. I reverse the engine.

Q. All right. Did the reverse take hold of the Bear?

A. Not right away, Mr. Shallenberger. She can't take in a second. It takes her four or five seconds until she feels it.

Q. Well, did you notice that it was taking hold at all before the Marsha Ann struck?

A. Just a little bit. She didn't go backwards, though, yet. [88]

Q. Did you still have forward headway?

A. She had forward speed yet a little bit.

Q. Now, did you do anything else besides reverse the engine?

A. As soon as she hit us, she hit actually, I put on "idle" again.

Q. In other words, you took it out of gear when she hit you, is that it? A. Yes.

Q. All right. Now then, before she hit you, however, did you do anything else other than reverse the engine?

A. No, I didn't do anything.

Q. Did you change the direction of the Bear in

(Testimony of Nick Milosevich.)

any way? A. No, we didn't.

Q. After the Marsha Ann hit you what did you do?

A. I told boys to look down in the hatch if the boat making any water. They all jump to work around the pumps, and we had big pump on the engine room, too. They was working and she started to make water, but we didn't see water alongside engine yet, you know, because fish down in the hold. We couldn't notice it right away. Four or five minutes after I saw water come through the fish, you know, through the fish, and she started to fill up on the back end, and they was working with the pumps and I told Marsha Ann [89] right away to give us something to hold us up so we won't sink.

Q. All right. And did they?

A. Yes, they did.

Q. What did they give you? What did they give you?

A. They give us block, double block, to hold her so she wouldn't sink down, and they put couple of lines on the side, too.

Q. Did you notice where the Marsha Ann struck the Bear, what part of the Bear?

A. Right in amidship between rigging.

Q. Did you notice what part of the Marsha Ann struck the Bear? A. By the bow.

Q. And did you notice whether the Marsha Ann stayed bow on to the Bear for any length of time?

A. Yes. She stayed there for about two or three minutes, maybe more, longer than that.

(Testimony of Nick Milosevich.)

Q. And did the Marsha Ann and the Bear eventually separate so that her bow was not against the Bear?

A. I think two or three minutes she was against her. She was pushing us a little bit, because she little bit heavier boat than we are, you know. She was pushing us sidewise a little bit, and on that same time, you know, we got a little bit of speed and she come kind of alongside of us, [90] you know, because I don't know if she back up or not. If she couldn't do that, I can't tell you that.

Q. Before the collision, Mr. Milosevich, did you hear any signals from the Marsha Ann?

A. No, I didn't.

Q. Did you hear any signals at all?

A. I heard lots of signals from other boats, maybe from her, very far, you know, about four or five, three or four hundred yards from us was lots of boats there. Was maybe 30 to 40 boats around us on the distance, around about a mile, you know, a mile area. But we didn't see them all because it was foggy.

Q. You heard no signals that were as near you, as you recall, as you saw the Marsha Ann?

A. No.

Mr. Callaway: Don't lead him, Mr. Shallenberger. I object to that as leading and the answer should be stricken.

The Court: Objection sustained.

Q. (By Mr. Shallenberger): Just before the collision was the Bear giving any signals?

(Testimony of Nick Milosevich.)

A. Yes.

Q. What signals?

A. We was air whistle. We was blowing four or five times a minute and each signal was anyhow between four and five seconds long. [91]

Q. After the collision, Mr. Milosevich, did you have any conversation with anybody aboard the Marsha Ann?

A. Yes, I had conversation with the captain.

Q. And by captain who do you mean?

A. Jack Borcich.

Q. All right. Where did that conversation take place?

A. When he was alongside of us.

Q. Well, where were you?

A. I was on top pilot house. He was on top pilot house.

Q. On top of his pilot house?

A. Yes.

Q. All right. Will you state what that conversation was, what he said and what you said, if anything.

A. I told him, I says, "Jack, what's the matter with you, you go so much speed on this fog?" He don't answer me on that. He told me this, you see, "Nick, I saw you over 300 yard distance." Then I told him, I says, "I thought you stop when you saw me with the radar." He had radar on, you know. I says, "Why don't you stop?" because we was just drifting, going slowly, about a mile, a mile and a half an hour. That is all we was going.

Q. All right. What did he say to that, if anything?

(Testimony of Nick Milosevich.)

A. He said that something was wrong with clutch, it seems to me, and he couldn't reverse the boat. That is what I get out of him. [92]

Q. Was there any other conversation between you and Mr. Borcich or you and anyone else that night?

A. Was not no conversation any more. I just told Jack to pull us in to the cannery so we can unload the fish, because we wasn't very far from there, maybe two, two and one-half mile off the light. He did it. That is all right, he did that.

The Court: Which is Borcich here?

Mr. Callaway: This is Mr. Borcich here. (Indicating a man at the counsel table)

Q. (By Mr. Shallenberger): Did you, Mr. Milosevich, form any opinion as to what speed the Marsha Ann was traveling when you first saw it?

A. I should judge when I saw it around about 40 to 50 feet from us, I should judge she was going about around four mile an hour, about four mile.

Q. And did you notice whether her speed changed any from that time to the time that she struck the Bear? A. I didn't notice that.

Q. Well, what do you mean, did you notice whether it did or whether it did not?

A. No. I mean this way: I don't think she change any speed because, you know, if he put engine "idle" at same time when he was here——

Mr. Callaway: Just a moment. I move to strike all that [93] out as not responsive after the words "I don't think she changed speed."

(Testimony of Nick Milosevich.)

Mr. Shallenberger: It may go out as far as I am concerned.

The Court: It may go out.

Q. (By Mr. Shallenberger): Did you notice whether the Marsha Ann changed her course in any way?

A. No, what I know. No, she was going direct for us.

Q. When you got to the cannery dock what was done?

A. Mr. Borcich, he bring us to the cannery to unload that fish and we were tied up right there.

Q. Did you unload the fish?

A. Unload the fish and Mr. Radus, he bring three or four pumps, electric pumps, to hold boat up, you know, not to fill up with water so we can unload the fish. And then we left from the cannery to shipyard, you know, and Mr. Borcich told me this way: He says, "Nick, what you have to back up for me," he says, "my clutch don't work right." That is what he told me. He says, "I back up for you."

The Court: Were the boats still tied together?

The Witness: Yes, sir.

Q. (By Mr. Shallenberger): At the speed at which you were traveling, Mr. Milosevich, just before the Marsha Ann struck the Bear what distance would it take you to stop the Bear? [94]

A. On that speed I was traveling, you mean?

Q. Yes.

A. I can stop Bear in a length of the boat, easy, on that speed I was traveling.

(Testimony of Nick Milosevich.)

Q. Who hired you as a crew member of the Bear, Mr. Milosevich? A. Who hire me?

Q. Yes. A. Mr. George Korgan.

Q. When did he hire you?

A. He hire me a year and a half ago.

Q. And you were a crew member of the Bear from that time on, were you?

A. I was a member of the Bear, yes, of the crew, you know. I was fish boss all the time.

Q. How long were you hired for, Mr. Milosevich?

A. I was hired that day when they brought the boat from Mr. Brescovich in Tacoma to go up to Alaska that they working for the Government fishing spider crabs up there. That is what they mean exploring things, you know, look where the fish is. So we was working up there until—oh about 110 days for Korgan to July, to July 10th. We came back around July 5th or 10th.

Q. Mr. Milosevich, during the time between November 30, 1948, when the collision occurred, and the middle of [95] February, 1949, were you working?

A. What did you say? I didn't get it. I didn't understand that.

Mr. Shallenberger: Will you read it, please, Mr. Reporter?

(Question read by the reporter)

A. Between the—no, I wasn't working then.

Q. Did you attempt to get work during that time? A. Yes.

(Testimony of Nick Milosevich.)

Q. And you were not successful? A. No.

Q. Mr. Milosevich, at the time that you first saw the Marsha Ann, in your opinion is there anything that you could have done to avoid the collision?

Mr. Callaway: I object to that as calling for a conclusion of the witness and invading the province of the court.

Mr. Shallenberger: He is an expert, Your Honor.

The Court: The latter part of the objection, I think, is good. I think that that is a relevant question the court will probably have to decide. The objection is sustained in the form of the question is now framed. Incidentally, that type of question is largely in the way in which the question is framed. I had that come up in my first patent case.

Mr. Shallenberger: I will change it, Your Honor.

Q. Mr. Milosevich, between the time you saw the Marsha [96] Ann and the time of the collision did you do everything that you believed possible to avoid the collision?

Mr. Callaway: I object to that as being irrelevant and immaterial as to the state of the mind of the witness, and is not determinative of any issue in this case.

The Court: I think the objection should be sustained. I think you could inquire of a witness as to what a skipper of a boat would do when he saw another boat approaching, and ask him what the different alternatives were and which one he did. He

(Testimony of Nick Milosevich.)

is an expert in that field. But when you try to ask him: Did you do everything that could be done, that is what the court has to decide. He is the fellow at the wheel.

Mr. Shallenberger: That is true. I thought the question proper because I was asking him if, in his opinion. After all, that is just one man's opinion.

The Court: Supposing that he thought that he did everything that he could have done, but actually it was determined he did not. What difference would what he thought make? There is no intent involved here. It is a question of whether there was negligence.

Q. (By Mr. Shallenberger): Mr. Milosevich, in your opinion, under the circumstances where a vessel is seen 40 to 50 feet to your starboard, bearing down upon you almost amidships at a speed of four miles an hour, and the vessel is proceeding at a speed of a mile or a mile and a half an [97] hour, what in your opinion could the helmsman of the vessel proceeding at a mile to a mile and a half an hour do to avoid a collision?

Mr. Callaway: I object to that——

A. He can't do it.

The Court: Just a minute, Mr. Witness.

Mr. Callaway: I object to that on the grounds that it calls for the conclusion of the witness, No. 1. No. 2, no proper foundation has been laid. And No. 3 is; it is irrelevant, incompetent and immaterial what his opinion is.

(Testimony of Nick Milosevich.)

The vice of the question is this: Suppose the witness says "nothing." It would have no probative value. In other words, if he wants to ask him if he is familiar with what is required under those circumstances of a skipper, that is another thing. But his opinion has no probative value.

The Court: Well, the objection is overruled, unless you seriously question that this man cannot give opinion testimony in such a thing. I take it he makes his living on the sea. He has been a fisherman since 1910, he has been a master.

Mr. Callaway: I don't think he testified he was a master. He said he had owned boats.

Mr. Shallenberger: No, he testified he was a master, also.

The Court: Had been a master and had owned boats. [98] It is, of course, clearly opinion evidence. But if you want to raise the question as to whether or not he can give an opinion, it would seem to me that on boats the same rule would apply as an automobile, that a person who is shown to have any familiarity in driving an automobile is allowed to give his opinion on matters concerning automobiles.

Mr. Callaway: Yes, your Honor. But I am not permitted to prove or disprove an automobile case by saying, in my opinion, it was safe to drive at 50 miles an hour as I was driving at the time. It is not up to me, because my opinion has no probative value. It is up to the trier of the facts to determine from all the circumstances whether or not that was

(Testimony of Nick Milosevich.)

a safe speed. But anyway, I am not going to press the proposition any more.

The Court: All right, objection overruled.

Mr. Shallenberger: Will you read the question to him, Mr. Reporter? He has probably forgotten it.

(Question read by the reporter.)

The Witness: Do you want me to answer that?

Mr. Shallenberger: Yes.

A. No, you can't do it, avoid the collision.

Q. You can't do what?

A. You can't get away from it. He have to hit you.

Q. Is there anything that the helmsman can do on a vessel traveling a mile to a mile and a half an hour in that [99] situation?

Mr. Callaway: I object to that as having been asked and answered.

The Court: Objection sustained.

Q. (By Mr. Shallenberger): Mr. Milosevich, at the speed that the Bear was traveling before the collision, if you had attempted to turn the Bear's course, would she have responded to her rudder?

A. No, she can't respond right away. It takes her about four minutes—at the rate of one mile, until she can lessen, you know, she won't lessen. It takes her four or five seconds to do that.

Q. You said just a moment ago, Mr. Milosevich, four or five minutes. You now say four or five seconds. Which is correct?

(Testimony of Nick Milosevich.)

A. You didn't ask me that question before, did you?

The Court: What did you mean, it takes four minutes, or four or five seconds?

The Witness: No, four or five seconds until she start to lessen on that slow speed.

The Court: And when she starts to lessen——

The Witness: You know, rudder.

The Court: When she starts to lessen, by that do you mean there will be some movement then of the boat?

The Witness: Yes, she start to move. It takes her four [100] or five seconds just to start it.

The Court: How many speeds ahead did this boat have?

The Witness: We can go to regular speed about eight and one-half.

The Court: Does the boat have a low and a high?

The Witness: Yes, your Honor.

The Court: How many speeds?

The Witness: You can put her at 10 different speeds if you want to.

The Court: Can you throw the boat into the top speed immediately?

The Witness: Yes, you can do that, too.

The Court: You can?

The Witness: Sure, on the top right away.

The Court: Supposing when the Bear was going a mile to a mile and a half an hour you immediately threw the Bear into top speed.

The Witness: No, you can't do that. You know

(Testimony of Nick Milosevich.)

what I mean, I can put engine up on high speed, she will go up from one mile to eight and a half mile. It takes her anyhow three minutes to do it. It takes her three minutes to do it.

The Court: If it was going a mile to a mile and a half per hour——

The Witness: Yes.

The Court: ——in order to get up to eight miles an hour [101] it would take at least three minutes?

The Witness: Yes.

The Court: But how long would it take her to lessen if you threw it into top speed?

The Witness: Oh, she start to pick up right away when you are going to start, you know.

The Court: Well, right away or three or four seconds.

The Witness: Yes. You know, three or four seconds she start pick up higher, all the time she is picking up. I never look on them seconds, you know. That is just judgment what we figure.

The Court: Would the Bear have picked up more speed if you had thrown it into top speed ahead or if you had thrown it into reverse? Which would have picked up the fastest?

The Witness: Ahead.

The Court: Ahead?

The Witness: Yes.

The Court: The reason for that is because the Bear was already moving ahead a little bit?

The Witness: Yes.

(Testimony of Nick Milosevich.)

The Court: And before it could go backwards it would have to stop it?

The Witness: Stop it to go back.

The Court: And go back. More than that, your head speed is a faster speed than your reverse?

The Witness: Than the reverse, yes.

The Court: All right, go ahead.

Q. (By Mr. Shallenberger): Mr. Milosevich, after the collision with the Marsha Ann did you observe any damage on the Bear? A. Yes.

Q. What damage did you observe?

A. When she hit us on the side, starboard side, she break the guards and she hit through the guard. When she went through the guard, she hit the side planking and she moved all them beams. She break the ribs on both sides.

Q. On both sides. You mean on the port side, too? A. Both sides.

Mr. Shallenberger: With your permission, Mr. Callaway.

Mr. Callaway: All right, surely.

Q. (By Mr. Shallenberger): Showing you this model of a purse seine boat, where on this boat? Will you indicate where on this boat?

A. She hit us?

Q. The Marsha Ann hit?

A. Right here, right there, right here.

Q. And this protuberance here is the guard?

A. She hit the guard about seven or eight inch thick, you know, three or four plank together, that wide.

(Testimony of Nick Milosevich.)

The Court: Was the green light on the Bear in about [103] position?

The Witness: In the same position. We didn't have the top pilot. The Marsha Ann——

The Court: I am talking about the green light. The green light was in about the same position?

The Witness: Yes.

The Court: Forward of the middle?

The Witness: Yes.

The Court: As it is on this model?

The Witness: Maybe a foot back or ahead, I don't know.

The Court: On that model the green light is about half-way between the middle of the boat and the bow of the boat.

The Witness: Yes, around about 15 feet.

The Court: Is that about what it is on the Bear?

The Witness: About 15 feet from here to here. She is only 65 feet long.

The Court: Is that about the same on the Bear?

The Witness: Yes.

Q. (By Mr. Shallenberger): When you were at the wheel before the collision, would you indicate on this model where you were?

A. I was right here behind this wheel, right there.

Q. Indicating the spokes?

A. The steering wheel. Yes, I was on the wheel.

The Court: Do you call this the bridge? [104]

Mr. Shallenberger: The flying bridge is about as good a name as any, I guess.

(Testimony of Nick Milosevich.)

The Witness: The flying bridge.

Q. (By Mr. Shallenberger): Where was Mr. Bogdanovich?

A. Bogdanovich was right here, right here.

Q. And where was Mr. Miskulian?

A. Miskulian was right here alongside of me on this left side of me, and we had the whistle right here. The air was connected. This is whistle right here. About here a little block with handle on it, right above the wheel, so he could reach it.

The Court: The witness has indicated the handle on the whistle was immediately above the steering wheel. The whistle itself was back on the mast connected with the handle by a wire or a cord?

The Witness: A wire, yes.

Q. (By Mr. Shallenberger): Now, at the time of the collision, Mr. Milosevich, how much space was there between the bottom of the guard rail and the water?

A. Oh, I should judge around about between six or eight inch clearance, because we had a little over 20 tons of fish on the boat. She was about (indicating) that is, on the portion of it, you know, this much.

Q. And from the guard rail up to this rail to which the rigging is attached, what distance is that? [105]

A. Oh, I should judge around about 28 inches to 30 inches high from here to here.

Q. 28 to 30 inches?

(Testimony of Nick Milosevich.)

A. Yes. Because I didn't measure it, but over two and a half feet, two and a half feet.

Q. You mentioned Mr. Ancich and Mr. Kaiza. Will you demonstrate on the model here where they were?

A. Mr. Kaiza was on this—we didn't have this pilot house.

Q. Here?

A. Here is one box we keep ropes. He was leaning on that box. He was right here.

The Court: Indicating a box at the——

Mr. Shallenberger: Starboard side.

The Court: ——starboard rear of the flying bridge.

A. And we had ice box on this side. Mr. Ancich, he came up to get some food out of it so he was watching this fog, you know, and stayed there for a while, and then he went down and come up. That is all I can tell you about Mr. Ancich.

The Court: Where was Ancich at the very time of the collision?

The Witness: I think he was up. He was up.

The Court: He was up?

The Witness: Yes. [106]

Mr. Shallenberger: In indicating Ancich's position the witness indicated——

The Court: The ice box at the port side.

Mr. Shallenberger: After portside of the top of the pilot house.

The Court: We will take a five-minute recess at this time.

(Testimony of Nick Milosevich.)

(Short recess.)

Q. (By Mr. Shallenberger): Mr. Milosevich, will you indicate on this model where Mr. Svorinich was?

A. Mr. Svorinich was on this side, too, watching net. Right here, he was watching net.

Q. I believe you said Mr. Kaiza was on board? Where was he?

A. Kaiza?

Q. Yes.

A. Kaiza was right here, leaning on box. I told you that before.

Q. That is right. Where was the engineer?

A. Engineer, he was alongside, right here, on pilot house. Alongside pilot house on the deck, top of deck right here.

Mr. Callaway: Indicating a position just aft of the green light?

The Witness: Yes. [107]

The Court: What was that last fellow's name?

The Witness: Hoopes.

Mr. Shallenberger: Hoopes, the engineer.

The Witness: He was top side on the deck.

Q. (By Mr. Shallenberger): Mr. Milosevich, when you first saw the Marsha Ann did you see anyone on her bow?

A. No.

Q. Mr. Milosevich, how much fish was aboard the Bear at the time of the collision?

A. I should judge about 20, 21 ton.

Q. And when you unloaded at Van Camp's dock how much fish did you unload?

A. 13 ton.

(Testimony of Nick Milosevich.)

Q. And was there any fish left in the vessel?

A. Yes.

Q. After you unloaded that 13 ton?

A. Yes.

Q. And how much was left?

A. Oh, about around seven or eight ton.

Q. Why was that?

A. Because there was too much water. We couldn't brail it any more.

The Court: Couldn't bail it?

The Witness: Couldn't brail it.

The Court: Brail? [108]

The Witness: Brail.

The Court: The word b-r-a-i-l?

The Witness: Brail, yes.

Mr. Shallenberger: B-r-a-i-l. You may cross-examine, Mr. Callaway.

Cross-Examination

By Mr. Callaway:

Q. Mr. Milosevich, if I understand it correctly, Mr. Borcich told you at the time of the collision, first, and again after you were at Van Camp fishery, that he was having trouble with his clutch, is that right? A. Yes.

Q. Twice he told you that, once on the sea and——

A. No. He didn't say it out on the sea.

Q. I misunderstood it.

A. He didn't tell me that. He told me inside.

(Testimony of Nick Milosevich.)

Q. He told you on the inside he was having trouble with the clutch?

A. When he put on alongside shipyard he couldn't back up. He is present right there.

Q. I thought you said—maybe I misunderstood you, that when you were out there you said that.

A. I think he backs up.

Q. You said, "What's the matter, Jack?" and he said, "My clutch is not working too good," or something like that. [109]

A. No, I didn't say that.

The Court: Now, wait a minute.

Mr. Callaway: Excuse me.

The Court: You testified that you said to him, "Why didn't you stop?"

The Witness: Yes.

The Court: What did he say to that?

The Witness: He said, "I think there is something wrong with my clutch."

The Court: He said that?

The Witness: Yes, that he couldn't back up.

The Court: That is what counsel is referring to.

Mr. Callaway: Yes.

Q. Didn't that take place right out there just as soon as the collision happened? A. Yes.

Q. Don't you know, Mr. Milosevich, that the Marsha Ann does not have any clutch?

A. She got the reverse. She have to stop the engine, don't she?

Q. I asked you, don't you know that that boat did not even have a clutch?

(Testimony of Nick Milosevich.)

A. She has got one-way clutch, supposed to have.

Q. All right. From Oceanside to San Pedro is, by sea, 55 miles, is it not? [110]

A. Yes, approximately from town.

Q. Yes.

A. To San Pedro, approximately.

Q. You were about two and one-half miles out of San Pedro at the time this collision happened—right?

A. That is correct.

Q. And you made that voyage from Oceanside between 5:30 and 11:30, is that right?

A. That is correct.

Q. What is the top speed of the Bear?

A. That was the top speed of the Bear. The top speed was about eight and one-half.

Q. Eight and one-half knots?

A. Yes, nautical miles.

Q. When you are traveling under way in fog what whistle signals are you required to give, do you know?

A. I don't understand that what you mean. If it is a fog or clear weather, that is what I want to know.

Q. I said, in fog, where visibility is greatly reduced as it was on this day. Let me withdraw that and ask you a question first. How far could you see just before the collision?

A. Oh, about half an hour before collision—

Q. No, no, no. Just before the collision.

A. Oh, I couldn't see more than 50, 60 feet from us, [111] it was so foggy.

(Testimony of Nick Milosevich.)

Q. 50 to 60 feet?

A. Yes, before collision.

Q. And traveling, moving under those conditions, what whistle signal are you required to give?

A. I was blowing with my whistle.

Q. I didn't ask you what you were doing. I asked you what signal you are required to give by the International Rules, or do you know?

A. I do know. We blow whistle about four times a minute.

Q. If I understood you correctly, you said that those were from four to five seconds long?

A. Yes, five to six.

Q. Five to six? A. Yes.

Q. What whistle signal would you expect to hear from another boat approaching you in the fog?

A. I heard lots of them.

Q. I asked you what whistle you would expect to hear, what signal from a boat approaching you in such a fog.

A. They was blowing whistle just as soon as we did.

Q. I didn't ask you that.

A. Then I don't understand you.

Q. I am trying to make myself clear. I don't want to [112] confuse you. If you were traveling along in a fog such as that was, what signal would you expect to hear from a boat approaching you?

A. They blow whistle like we do, I told you.

Q. In other words, you do not know what the International Rules require of you in the way of a

(Testimony of Nick Milosevich.)

whistle signal under those conditions, is that right?

A. No, I understand it, because I got lots of experience in that.

Q. Tell me, then, what whistle signal you would expect under those circumstances?

A. If I heard the whistle blowing ahead of me or side of me, I blowing too so they know that we pretty close around there some place, you know.

Q. In other words, you do not know the precise whistle signal that is required by the International Rules under conditions such as we have been talking about, is that right? Can you tell me what the International Rules require of a vessel under way in the way of a whistle signal under those conditions?

A. I understand this, that I was supposed in a fog to blow a horn every half minute.

Q. Every half minute.

A. On that condition, that we were lots of boats running. He is supposed to blow every three or four times a [113] minute.

Q. What whistle signal would you expect to hear from a boat that was not under way in that fog but stopped?

A. He is supposed to ring the bell.

Q. Ring the bell?

A. Ring the bell, because if a boat stays still on the anchor, he rings the bell.

Q. What about the whistle signal?

A. What?

Q. What about the whistle signal that is required?

A. Because, you know——

(Testimony of Nick Milosevich.)

Q. No, no, no. What about the whistle signal that is required under those circumstances?

A. I don't understand that. If you talk my language——

Q. What whistle signal would you expect to hear from a boat that was standing still in the water under the conditions such as we have been talking about, where visibility was reduced to 50 to 60 feet?

A. If a boat standing still, he is supposed to give a bell.

Q. No whistle?

A. A whistle if it is necessary.

Q. Just if it is necessary? A. Yes.

Q. What makes it necessary? [114]

A. Necessary if he gets some boat close to him, he give him also so he wouldn't hit him.

Q. What kind of whistle would he give to boats that get close to him?

A. Give the horn, air horn.

Q. What kind of signal would he make with the air horn?

A. I don't know how many whistles he is supposed to blow. I can't tell you that.

Q. You can't tell me that. All right. What signal, if any, did you give to the Marsha Ann when you first sighted her?

A. We was blowing one every two or three seconds, and at that time I give a short. The crew holler, "Here is a boat on us." That is all. It was too late to do anything more.

Q. So you did not give them any signal?

(Testimony of Nick Milosevich.)

A. No, we did. We blow whistle all the time.

Q. In other words, you were making the same signal that you had been making all along?

A. All the time, three or four time a minute. When we saw the Marsha Ann we still was blowing just the same.

Q. When you first sighted the Marsha Ann you realized at that time that an accident or collision was likely to happen, didn't you? [115]

A. No, I didn't expect that accident going to happen.

Q. You did not when you saw the Marsha Ann 40 to 50 feet off your starboard?

A. Yes. Anyway, if she back up when she saw us, we might avoid collision. Maybe we hit a little bit lighter.

Q. Why didn't you, instead of reversing your engine, put her at full speed ahead?

A. Even if I do that——

Q. I asked you why you didn't?

A. Because you cannot avoid a accident, nohow.

Q. I see. All right. Of course, traveling at one mile per hour you walk at that speed, don't you?

A. Sometime I have, yes.

Q. Sure. In other words, you could reverse your engines at one mile per hour and almost stop instantly, can't you? A. No, you can't do it.

Q. It don't take any boat lengths to stop at one mile per hour, does it?

A. You might stop the boat if she is empty

(Testimony of Nick Milosevich.)

quicker than if she is loaded. You know, she is pretty heavy.

Q. Wouldn't she stop quicker if she is loaded than she would empty? A. No, nohow.

Q. When you reverse your engine, the engine itself, [116] the reverse of the engine takes effect immediately, doesn't it?

A. You can't stop no boat immediately.

Q. No. But the engine starts reversing immediately, doesn't it? A. Yes.

Q. And that starts the propeller going in the opposite direction, doesn't it? A. Yes.

Q. When you do that, doesn't that tend to make your boat, the stern of the boat, go to one side or the other?

A. I going to tell you. The majority of the time like when we landing our propeller always pull boat a little bit on port side, pull the stern a little bit.

Q. Yes. But it pulls it to either one side or the other.

A. No, the port side. I don't care a damn, because I tried a million times. Excuse it, Judge.

Q. It causes it to sway one way and then the other, is that right? A. I know that.

The Court: Do you mean this boat or all boats?

The Witness: No, just stern, was bring stern like this.

The Court: This boat or all boats?

The Witness: The majority of boats that I went

(Testimony of Nick Milosevich.)

on. They can tell you all things about me, they know that. [117]

Q. (By Mr. Callaway): Isn't it true, Mr. Milosevich, that the first place at which the bow of the Marsha Ann contacted the Bear was up about the starboard beam?

A. When you see her first——

Q. No, no, no. I am talking about where the two boats first came into contact or together up at about the starboard beam?

A. No. I will have to explain that you myself.

Q. Wait a minute.

A. She hit right on the galley door. I know that.

Q. All right. This is a fair representation of the Bear when she was brought in, isn't it?

A. Yes.

Q. And isn't this part here on the guard rail that I point to where the bow of the Bear was being scraped, and finally——

A. That is right, right. She never hit around here no place, no place.

Q. Okay. A. She just hit straight.

Mr. Callaway: All right. I offer this in evidence.

The Witness: She was just moving slowly like a fly on fly paper.

The Court: Admitted into evidence.

The Clerk: As Respondents' Exhibit F. [118]

The Court: Respondents' Exhibit F.

(The document referred to was marked Respondents' Exhibit F and received in evidence.)

(Testimony of Nick Milosevich.)

Q. (By Mr. Callaway): The only damage that you observed on the Marsha Ann was right down here on her bow stem, wasn't it, where I am holding my finger? A. Right there?

Q. Yes. That is all the damage you saw on her, wasn't it?

A. That is all. She never even scratched the paint.

Mr. Callaway: I offer that into evidence.

The Court: The place you referred to is the place on the photograph where the three arrows are?

Mr. Callaway: Yes, your Honor.

The Court: It will be received into evidence as Respondents' G.

The Clerk: Respondents' Exhibit G.

(The document referred to was marked Respondents' Exhibit G and received in evidence.)

Mr. Callaway: I will also offer into evidence a view of the port side of the Bear, being a similar view to the one that the witness just referred to, taken at the same time that the other photograph was taken.

The Court: Admitted into evidence as Respondents' next in order. [119]

The Clerk: Respondents' Exhibit H.

(The document referred to was marked Respondents' Exhibit H and received in evidence.)

Mr. Callaway: Yes. The purpose for the last

(Testimony of Nick Milosevich.)

photograph, if the court please, is solely that a comparison can be made with one side of the Bear as against the other.

Q. Did you, Mr.——

A. Call me "Nick," it is all right.

Q. All right, Nick. It is easier for me. Did you eventually come alongside the Marsha Ann or did she come alongside your boat eventually?

A. Eventually?

Q. Yes. In other words, when you said to Jack here, "Throw me a line," or something, "we are taking water," or whatever you did say, did you move alongside the Marsha Ann or did she move alongside you?

A. We both moved at the same time. We went a little bit ahead and we back up alongside of her.

Q. You backed up alongside of her?

A. Yes. We tie up together.

Q. If I understand it correctly, right after the collision you disengaged your engine?

A. Yes. I didn't shut her down, though.

Q. I didn't mean that. I mean you disengaged her?

A. All right, sir. [120]

Q. And the Marsha Ann was in a position, as you say, at about right angles with your boat?

A. Yes, that is all right.

Q. Then when you realized you were taking water did you back alongside of her this way, or did you pull away or what?

A. That was about three or four or five minutes afterwards.

(Testimony of Nick Milosevich.)

Q. That is what I mean.

A. And back up alongside a little bit and she went ahead a little bit. She put double block on us and put two lines on the side so she wouldn't sink on us.

Q. In other words, she put a boom out with block and tackle around it, with a sling on it clear around your boat?

A. Yes, that is right.

Q. And then on each one she made it fast with two lines?

A. Yes, that is right.

Q. The minute the accident happened your crew started getting aboard the Marsha Ann, didn't they?

A. Because they was scared the boat was going to sink.

Q. I know that.

A. You would, too.

Q. What?

A. You would, too. [121]

Q. I don't doubt it.

A. I would if I could, too, but the captain have to go down with the ship.

Q. But they did, they immediately started getting aboard the Marsha Ann. Didn't you think, Nick, when you saw the Marsha Ann there for the first time that you were going to avoid a collision?

A. No, I couldn't avoid it nohow.

Q. I mean, but you thought for just a split second that you were going to avoid it, didn't you?

A. I didn't. I couldn't say that.

Q. Well, this much of your bow avoided her, didn't it?

A. Yes. She was going for that green light. She was going, about 50 feet distance from us. We

(Testimony of Nick Milosevich.)

was going a mile an hour. You cannot avoid that accident nohow.

Q. My question was this, the next question: When you started scraping or she started scraping you, whichever it was, didn't you give her a hard turn to port to get away from her?

A. I didn't touch anything because——

Q. How do you account, Mr. Nick, for this.

A. All right. Did you took a picture out when you were over there?

Q. Sure, I will give you a picture. This scraping [122] along the rail, and then this indentation right here. I will give you a better view of it.

A. Better give me a better view of it.

Q. Well, here, I will get another one here that might be even better. Can we put this in?

A. This is from shipyards they taken.

Q. That is just another view.

A. See, approximately she was going, Judge, if we was going ahead, tear up all this guard up. We would go ahead.

Mr. Callaway: All right.

A. She hit it. She was straight there.

The Clerk: Respondent is offering another exhibit, your Honor.

The Court: Let us look at it.

The Clerk: Respondents' Exhibit I in evidence.

(The photograph referred to was marked Respondents' Exhibit I and received in evidence.)

Mr. Callaway: Just take a look at it.

(Testimony of Nick Milosevich.)

Q. That was made by the bow of the Marsha Ann, wasn't it?

A. That is right, yes, sir. And this is iron, too, you know, all iron.

Q. Oh, yes, I know it.

A. You see, this is about two feet here. No, I don't think it is more than two feet. You see how far she was going. [123] If we was going full speed, only four or five mile an hour, we tore up all our guard on the back.

Q. Is that so? A. Sure.

Q. How do you account for the fact, if they hit you broadside, you didn't get just a square "V"?

A. See how she hit?

Q. It was not going straight, was it, when it hit?

A. Yes, but she gain. She slides a little bit. I know from water, too, you know, she slides.

Q. I see. Actually, then, what happened was that the Marsha Ann, when this was made, was in slow——

A. You think she was going this way?

Q. I am asking you.

A. No, no. How? She slide on it. She wouldn't do no damage to no boat, I know that.

Mr. Shallenberger: May the record indicate where he said "two feet" there, the indentation?

The Court: The indentation.

The Clerk: That is on Exhibit I.

Mr. Callaway: Exhibit I, that is right.

Q. Relatively speaking, these two little wooden

(Testimony of Nick Milosevich.)

boats are about comparable to the size of the Marsha Ann——

A. And the Bear.

Q. ——and the Bear. One is the longer and the bigger. [124]

A. Yes.

Q. Well, that indentation that was made, was made at about this angle right here, wasn't it?

A. No, no. You are wrong.

Q. You show me what angle it was made at.

A. This boat 65 feet.

Q. Yes.

A. Well, she went about this far, about this far. She was going in this angle on the beginning.

Q. Just show me.

A. She was going a mile an hour and she was going about four. You can figure with a pencil.

Q. I don't want to figure it out with a pencil. I just want you to be the boss.

A. She was going like that.

Q. Like that?

A. Right straight and no sideways, right straight. I tell you the truth.

Q. All right.

A. I swear an oath I going to tell you the truth, too.

Q. You had not sighted the lighthouse at the breaker, had you?

A. I don't understand that.

Q. You had not sighted at the time of the accident the [125] lighthouse at the breakwater, had you?

A. We heard it. We heard the lighthouse.

(Testimony of Nick Milosevich.)

Q. You were about six or seven hundred feet off of it?

A. No. When we had that collision, we heard it before he hit us.

Q. Heard the lighthouse signal?

A. Oh, yes, we heard the lighthouse before he hit us. We were staying still. You can't enter the lighthouse at seven or eight miles, you know.

The Court: Wait.

Q. (By Mr. Callaway): I show you United States Survey, showing generally, being a U. S. Coast and Geographical Survey No. 5148. This is the breakwater that you were headed for, isn't it, right here? A. This is jetty.

Q. That is the jetty.

A. We was heading for this light direct.

Q. That is what I say. All right, now.

The Court: What does that refer to?

Mr. Roethke: That is the Los Angeles Harbor breakwater light.

The Court: All right.

Q. (By Mr. Callaway): Now, as you were traveling along outside the jetty, you could see the jetty, could you? [126] A. No.

Q. As you went along you were looking for this light, because that is where you wanted to go inside?

A. No, I wasn't looking. We was straight forward. Of course, we heard it. And lots of boats are around here all over, you know, blowing whistles, too. So we stopped, you know, to where she clears before a little bit so we can enter on account of the

(Testimony of Nick Milosevich.)

boats. You might hit lots of boats in that way if you go in. So we were drifting, kick her ahead, see if she was clear, we kick her ahead again. That is all we was doing.

Q. The density of the fog at that time was remaining about the same, wasn't it?

A. No, no. When we got to Seal Beach around here some place—I don't know. Where is Seal Beach here?

Mr. Roethke: That is Long Beach there.

The Witness: Yes. We was right here about seven or eight miles off.

Mr. Roethke: Here is Seal Beach right here.

The Witness: We was right outside here some place. We have, I figure, about not quite an hour to get to the light when we hit the fog at the beginning of the fog.

Q. (By Mr. Callaway): What do you mean you figured you had about not quite an hour to get to the light? A. I am sure. [127]

Q. What do you mean by that?

A. What do I mean by that? I know by my time how much time I have.

Q. The accident happened about 11:30.

A. What?

Q. The accident happened about 11:30?

A. 11:30, yes. That was the light here.

Q. Were you due in at some particular time?

A. We were supposed to be there maybe around 10 minutes before noon. I told the crew, all of them, to be on the watch.

(Testimony of Nick Milosevich.)

Mr. Callaway: I see.

Mr. Shallenberger: Do you want to put that chart in?

Mr. Callaway: Yes, might as well.

The Court: Admitted into evidence as Respondents' next in order.

The Clerk: Respondents' Exhibit J in evidence.

(The document referred to was marked Respondents' Exhibit J and received in evidence.)

Q. (By Mr. Callaway): As I understand it, you first encountered the fog around Newport, light fog?

A. We got around Seal Beach.

Q. I thought you said that that is where the fog got dense?

A. No, I didn't say that. [128]

Q. Well, was it the first fog you encountered at Seal Beach? Was that right? A. Yes.

Q. Where did it get dense to where visibility was down to 50 to 60 feet?

A. Oh, when she was pretty thick we was, I should judge, around about 35 or 40 minutes to the jetty yet, real thick.

Q. Well, when you say 35 or 40 minutes to the jetty, you mean 35 or 40 minutes to the jetty traveling at eight and one-half miles per hour?

A. Going ahead.

Q. Is that right?

A. Yes. Not to the jetty. Don't you take me wrong. We slow down when we hit the fog.

Q. No, I didn't mean that. I meant that you, the way you worded it, was "when you hit the fog you

(Testimony of Nick Milosevich.)

were 35 or 40 minutes to the jetty," traveling at eight and one-half miles?

A. But we slowed down, yes.

Q. At that time you reduced your speed to half speed? A. Yes. Half speed, that is right.

Q. How long did you travel at half speed?

A. Oh, maybe a mile, then I put her down on two miles, way down. I would put her down as I heard lots of boats were going same direction I was going, same direction. So I don't know how many boats, but I heard lots of whistles far distance, three or four or five or six hundred yards or maybe a thousand yards from us you can hear them, see.

Q. Why didn't you stop?

A. I stopped, then I slowed down. I told you I slowed her way down. If you don't hear no whistle alongside of you close, you proceed two or three mile an hour just the same, but when you heard them close, you put your speed on mile, a mile and a half or stop it.

Q. You heard a lot of whistles just before the accident all around you, didn't you?

A. Yes, but they was far away, going same direction.

Q. How can you tell what direction the boat is traveling in by the whistle it makes?

A. I don't understand that.

Q. How can you tell what direction a boat is traveling from the whistle signals?

A. Sure you can tell.

Q. How?

(Testimony of Nick Milosevich.)

A. By echo of the boat. Now, for instance, you going the same direction, with two going same direction, you blow the whistle, I blow mine and about half a minute after you blow your whistle I blow mine again, so I know that you are going same way.

Q. Oh, I see.

A. If you lose that echo, you know that that boat going [130] different direction. You are losing the echo.

The Court: Is there an actual echo or does he just use the term "echo" to mean the sound?

The Witness: Yes, sound it. You can hear it through the air. Echo means off the wall and comes back to you, see.

Q. (By Mr. Callaway): You did not answer the whistles that you heard, did you?

A. What?

Q. You did not answer the whistles that you heard? You just kept blowing a whistle?

A. Yes, I was blowing.

Q. Fire or six seconds long, four or five times a minute?

A. A minute, yes, that is true. And I didn't do that, that is, Mr. Miskulian was doing it for me because I was watching the compass.

Q. You had a man there doing that?

A. Yes, a man alongside blowing the horn for me.

Q. Did you tell him what whistles to give?

A. Yes.

Q. What whistles did you tell him to give?

A. I told him if he didn't hear no boat to give it

(Testimony of Nick Milosevich.)

two or three a minute in that fog and slow. We was going slow speed.

Q. How long had it been before this collision that [131] you heard the last whistle signal from any other boat? A. Before I had a collision?

Q. Yes.

A. Oh, we heard lots of them pretty long distance, two or three hundred yards from us.

Q. How long had it been since you heard the last whistle?

A. I heard it pretty near all the time almost, our port side.

Q. Constantly?

A. Yes, because there was lots of boats.

Q. Now, take this situation: You assumed that all the boats were coming in?

A. Them what I hear, yes, they was coming in with me.

Q. Yes. And you were not looking for any boats that were coming out of the harbor?

A. Sure I do. We had five men to watch for them.

The Court: Now is a good time to take our adjournment until 2:00 o'clock. I have a pre-trial on at 2:00. Do you want to make it 2:15?

Mr. Callaway: Fine.

Mr. Roethke: Yes, sir.

The Court: 2:15. I do not know how long it will take.

Mr. Fall: If the court please, there is an interpreter who is employed over in the legal division

(Testimony of Nick Milosevich.)

of the FHA has [132] made arrangements to be over here at 2:00 o'clock. I was wondering if we could call one witness out of order at that time.

Mr. Callaway: Oh, sure.

Mr. Fall: And use the interpreter, because he wants to get away.

Mr. Shallenberger: If the court please, just a moment. I am about half dead today with a cold. I almost did not get here at all, and I would appreciate an adjournment not later than 4:00 o'clock.

Mr. Callaway: I have no objection, your Honor.

The Court: Can this case be concluded on Tuesday, the 13th?

Mr. Callaway: Your Honor, I could not give you a guarantee on it, but I will do my best. I will tell you this, I think that we have about seven or eight witnesses who will have to be put on after today.

Mr. Shallenberger: I think most of our witnesses that remain to be put on will be much faster than the two, Mr. Milosevich and Mr. Korgan, probably.

Mr. Callaway: I anticipate you will take the rest of the day?

Mr. Shallenberger: I think so, yes.

Mr. Callaway: If you do not, I have a couple of witnesses.

Mr. Shallenberger: No. I think we will. [133]

Mr. Callaway: I think we might be able to do it, but it is going to be a tight fit.

The Court: Well, get some sleep over the week-

(Testimony of Nick Milosevich.)

end because we will probably start at 9:30 and we may work pretty late on Tuesday.

Mr. Shallenberger: That is all right, your Honor. I am willing to do anything you want to do.

(Whereupon, a recess was had until 2:00 o'clock p.m. of the same day, Friday, December 9, 1949.) [134]

Friday, December 9, 1949, 2:15 P.M.

Mr. Shallenberger: I believe Mr. Fall wants to call a witness out of order and I believe Mr. Callaway has already signified it is all right.

The Court: All right.

Mr. Shallenberger: I believe he is also going to use an interpreter for this witness, Miss Bradvica. The witness is Martin Miskulian.

(Anne Bradvica sworn as an interpreter to interpret from English into Croatian and from Croatian into English.)

MARTIN MISKULIAN

one of the intervening libelants called as a witness on behalf of libelants and intervening libelants, being first sworn, was examined and testified as follows:

The Court: Does he understand any English?

The Interpreter: Yes, he understood that.

The Court: If counsel do not object to it. The witness apparently understood the oath in English

(Testimony of Martin Miskulian.)

and cut short the interpretation of it. All right, let's go.

The Clerk: He said "yes."

Direct Examination

By Mr. Fall:

Q. Mr. Miskulian, were you a member of the crew of the Bear at the time of the collision with the Marsha Ann? [135]

(This examination is being conducted through the interpreter.)

A. Yes, sir.

Q. And where were you standing just before the collision?

A. I was standing by the pilot house near the skipper.

The Interpreter: He says, "This is the skipper and this is he. This is the position."

Q. He is indicating that he was left of the skipper?

A. On the left.

Q. Was that on the flying bridge of the Bear?

A. Yes, yes.

Q. How long had you been on the flying bridge next to the skipper?

The Interpreter: He said, "one foot," is his interpretation, but I think he misinterpreted that question.

Q. Yes. Will you ask him that question again, how long a period of time?

A. I was in service there.

Q. How long before the accident did you go up on the flying bridge?

(Testimony of Martin Miskulian.)

A. I was on the top before the fog came in.

Q. What were you doing on the top?

A. I was standing there at the wheel.

Q. When the fog came in what did you do? [136]

A. When the fog came, when the fog came and before the collision, the skipper came up and took the wheel. He said he wouldn't swear. He would say, rather, that it was a quarter of an hour.

Q. After the skipper took the wheel what, if anything, did you do?

A. I had the rope in my hand.

Q. The rope to what?

A. The rope to the mechanism that makes a noise, you know.

Q. The foghorn?

A. Trumpet. He calls it a "trumpet."

Q. The boat's whistle? A. Yes.

Q. Who was the skipper?

A. Nick Milosevich.

Q. Milosevich? A. Nick Milosevich.

Q. Did you operate the boat's whistle?

A. Yes. I pulled when he told me.

Q. When who told you?

A. Nick Milosevich is who.

Q. And when you came into the heavy fog how often did you blow the whistle?

A. When it was the heaviest fog of them all I blew [137] it about five times, five or six times.

Q. Five or six times in how long?

A. Five or six times on one minute. He says

(Testimony of Martin Miskulian.)

there would be about a five seconds lapse between each.

Q. Five seconds between each or five seconds for the time that he blew the whistle?

A. Yes, he held it. He said, "I hold it four or five seconds." He is not sure. I am not sure.

Q. Did you see the Marsha Ann before the collision?

A. I saw it approximately 50 feet away, when it was 50 feet away.

Q. Where was it when you first saw it?

A. On the right side.

Q. At that time how fast was the Bear going?

A. I cannot be sure. I cannot be sure. We were going very slowly, about a mile or a mile and a half.

Q. Were the running lights and mast lights of the Bear on at the time or just before the accident?

A. Before the accident occurred all the lights were on because it was very foggy.

Q. Did you see whether or not the lights were burning on the Marsha Ann?

A. I did not observe. I did not look.

Q. From the time you first saw the Marsha Ann until the time of the collision did you see anyone on the bow of the [138] Marsha Ann?

A. I did not see anyone. I saw Jack, the skipper, and another thin lad when they hit us, but I was not sure.

Q. Where were they?

A. Jack was at the wheel and the other fellow was next to him, and I didn't see anybody else.

(Testimony of Martin Miskulian.)

Q. Was there anyone on the top of the pilot house of the Marsha Ann when you first saw the Marsha Ann?

A. No, I didn't see anybody but those two people.

Q. About what period of time elapsed between the time you first saw the Marsha Ann and the time it collided with you?

A. I don't think that there was more than two seconds.

Q. Did you watch the compass on the Bear at any time after you came into the fog?

A. You mean he as an individual?

Q. Yes.

A. No, I did not. The skipper had that job.

Q. Did the course of the Bear change at any time after you saw the Marsha Ann until the time of the collision?

A. From my observation I would say not. I think we were going straight. There wasn't time.

Q. Did you have an opportunity to estimate the speed of the Marsha Ann?

A. From the impact, I would say they were going fast. [139]

Q. Are you able to judge in miles an hour?

A. I should. I have been on the sea a good many years. From my experience on boats, I would say the boat, the Marsha Ann, would have to be going four or five miles.

Q. Do you mean nautical miles?

A. Yes, nautical.

(Testimony of Martin Miskulian.)

Q. How long have you been going to sea as a fisherman?

A. Here, I have been fishing here for five years, but since 1913 I have been on the sea.

Q. During the five years that you have fished here have you fished sardines each year?

A. Yes, I have fished for sardines here and San Francisco and Monterey and Alaska.

Q. After the date of the collision until the middle of February, 1949, did you engage in any employment?

A. No, I didn't, and not even in March.

Q. Why?

A. I looked all over but I just didn't get an opportunity.

Q. What type of employment did you look for?

A. I was looking for a fishing job.

Q. What did you do with reference to looking for employment?

A. I went from boat to boat. I was to San Francisco and Monterey. [140]

Q. Between all that time between November 30th and in March did you continuously look for employment?

A. Surely I did. I looked all around. In March I got a job on the *Buccaneer*.

Mr. Fall: You may cross-examine. Say, I do have another couple of questions to ask.

Q. After the collision—I mean immediately after—what happened to the *Bear*?

A. It was broken.

(Testimony of Martin Miskulian.)

Q. Did the Bear continue going forward?

A. No. No, the way that he, meaning the Marsha Ann, hit us we stopped, and he was showing you that here is the position and that they were carried ahead.

The Court: The record will show that the witness is placing one hand at right angles to the palm of the other.

Q. (By Mr. Fall): Do you mean that the Bear continued forward, or did it go sideways or did it stop?

A. Straight, straight ahead, front.

The Court: Now, the witness' hand demonstrated one thing and the translation was another. Ask him which hand is the Bear and which hand is the Marsha Ann.

The Interpreter: That is the Marsha Ann.

Q. (By Mr. Fall): His right hand is the Marsha Ann and the left hand is the Bear?

A. That is right. [141]

Q. Will you now just show us in what direction the Bear went after the collision?

A. After he hit us, he didn't separate from us, he shoved us apparently to the side together. They were together.

Q. Did the Bear remain upright or did it keel over to one side or the other?

A. It was on the water but it was turned a little bit.

Q. Towards which side?

A. On the left, on the left it tipped.

Q. The left tipped down or up?

(Testimony of Martin Miskulian.)

A. Down.

Mr. Fall: I have no further questions. You may cross-examine.

Cross-Examination

By Mr. Callaway:

Q. Now, you say you went to Monterey and San Francisco in March seeking employment?

A. Yes.

Q. Fishing? A. Yes, for fishing.

Q. Sardines?

A. No. I was looking for an opportunity to go to Alaska.

Q. There is no season open in Monterey or San Francisco [142] in March for any fish, is there?

A. Not for sardines, no. I was interested in just finding work at that time.

Q. As a matter of fact up until this year there have not been any sardines in either Monterey or San Francisco, even during the season?

A. No, that is right. But there is other fishing. You can fish anchovies in Monterey.

Q. About how many feet was the Bear pushed sideways?

A. Do you mean—he wants you to understand that the Marsha Ann was not separated from the Bear but we were going this way.

Q. I understand. I am trying to find out how many feet it was pushed sideways.

A. I would say at least three minutes or probably four.

Q. Three or four minutes? A. Yes.

(Testimony of Martin Miskulian.)

Q. How many feet in those three or four minutes? A. I can't estimate the feet.

Q. Was it a boat length of a boat the size of the Bear?

A. I am sorry. I cannot tell you whether it is three meters or 30 meters, but all I know it was about three minutes. I was not looking at the water.

Q. In other words, you were traveling through the water sideways three or four minutes? [143]

A. Yes. I would say at least three and probably four.

Q. When the Marsha Ann struck she did not bounce off but just continued?

A. No, no. Afterwards it was full of water and after the collision the two were separated. That was several minutes after.

Q. Was the Bear traveling at about the same speed at the time of the collision that it was, say, a minute before the collision?

A. I think that the Bear was always moving slowly and I cannot say at the time of the collision whether—he said “he”—at the machinery would have made it go faster or slower, but we were going very slowly.

Q. Did you take your station on the pilot house at the same time that Nick took the wheel?

A. I was up there before him, but as soon as the fog rolled in he came up.

Q. Who did he relieve?

The Interpreter: You mean he?

(Testimony of Martin Miskulian.)

Mr. Callaway: No, the skipper, the helmsman.

A. He relieved me, because I was on the wheel before.

Q. And who did you relieve?

A. There was just the two of us and I started. There wasn't any fog around.

Q. When did he go on the wheel? Ask him when he went [144] on the wheel.

A. I think I went on, I think around 10:00 o'clock.

The Court: Who does he mean by the skipper? Does he mean Korgan or Milosevich, Nick or Korgan?

A. Nick Milosevich, he is the skipper.

Mr. Callaway: The captain of the boat. The skipper was Korgan, wasn't it?

A. Yes. But Nick is the owner of it. He relieved me and George was sleeping.

Q. Did you relieve Korgan?

A. Yes. He called us at 10:00 o'clock.

Q. How long had you been traveling in the fog before the collision?

A. I figure about 15 minutes, over 15 minutes before.

Q. Hadn't you been traveling in the fog all the way from Seal Beach?

A. No, it wasn't foggy all the time. When we left it was clear.

Q. I understand when you left Oceanside it was clear, but I mean didn't you run into heavy fog

(Testimony of Martin Miskulian.)

about Seal Beach, about 10 miles from where you were?

A. I believe that the fog set in, from my calculating, about, I would say, 10:45 I think.

Q. And the accident happened about 11:30?

A. Yes, about that time. [145]

Q. So you had been traveling in the fog 45 minutes, instead of 15?

A. Yes. I can't give you the exact. I can't give you the exact amount of figures, but I can only tell you what I remember.

Q. All right. Did you blow the whistle when Nick told you to or did you blow it on your own volition?

A. When he told me. When he told me, then I pulled.

Q. In other words, if he would say to pull it, then you would pull it, and if he did not say to pull it, you would not? A. Yes.

Q. Did you hear any whistle signals from any other boat, say, within a minute before the accident happened?

A. Yes, there was boats all around and I heard them.

Q. What signals were you expecting from a boat that was moving in the fog?

A. There is no special kind of signal, just the signal that there is a ship afloat.

Q. And what signals were you expecting from a boat that was not under way in the fog?

(Testimony of Martin Miskulian.)

A. What kind of a boat and signal? Would you read?

Q. For a boat that is still in the water in the fog.

A. I don't know. I am not the skipper.

Q. You were navigating the boat up until 45 minutes [146] or some such time before this accident happened, were you not?

A. He said it was not 45 minutes that I was actually at the wheel. It was only 15 or 20 minutes.

Q. Very well. Then you were coming through the fog up until 15 minutes before the accident happened, at the wheel, were you not?

A. Just I think so.

Q. How would Nick signify or indicate to you when you were to blow the whistle?

A. He told me to pull.

Q. And did he tell you how long to blow?

A. Yes, long.

Q. Well, when you say "long" what did he say to you in that particular?

A. When he would say "long" I would blow it for about five seconds, maybe more.

Q. How did you estimate the length of time you blew it?

A. That is the way I think. I can't tell you exactly whether it was four, five, or six. I just guess. But, he says, I know it was longer than usual.

(Testimony of Martin Miskulian.)

Q. In other words, you did not make any measurement of the blast, you estimated it to be that long? A. Yes, I just estimated it.

Q. So five or six times during the minute Nick would say, "Give her a long blast," is that right?

A. He said there are three or four boats around us and, as a boat came near—maybe 10 or 20—as a boat came near, he would say to blow.

Q. But he did not tell you to blow at other times when you did not hear the whistle from some other boat, is that right?

A. He always answers all the boats, and if there is no answer, he blows anyway, and it is because it was foggy.

Q. And Nick was telling him when to do that?

A. He always told me.

Q. All right. Have you got any other type of sounding device other than the whistle on the boat?

A. A horn.

Q. Got a horn? A. A horn.

Q. Just like an automobile horn or at least that type?

A. No. He says it is different because it has got a tongue in the horn, because it makes a different type of token.

Q. I understand that, it makes a sound like this, doesn't it, "beep-beep"? A. No.

Mr. Callaway: It does not.

Mr. Fall: A very good imitation.

Q. (By Mr. Callaway): I want to ask you this

(Testimony of Martin Miskulian.)

question: [148] Were you using the horn at any time as you were coming through the fog?

A. The whistle and this—he calls it a bell—and he said, and that is all there is.

Q. My question was, was that being sounded?

A. No, no, just the whistle.

Q. Just the whistle. All right. You stated that it was only two seconds from the time you sighted the Marsha Ann to the collision.

A. I figured that it couldn't have been more than that. He said, "I just saw the top and the first thing I knew we were hit, and it couldn't have been over 40 to 50 feet."

Q. In other words, you mean to testify that the Marsha Ann traveled 40 to 50 feet in two seconds?

A. I don't know exactly. That is what I thought. I thought he was going to hit our green light but he hit us 12 feet away from it.

Q. The first time that the Marsha Ann came in contact with your boat the front end of it came in contact right about the starboard beam?

A. I thought he was going to hit up on the green light. I was standing up there.

Q. Yes.

A. And I thought he was going to hit me. You see, this position. [149]

Q. Yes.

A. He missed us there and he hit us down below.

The Court: The record will show that the witness was demonstrating with his palms perpendicu-

(Testimony of Martin Miskulian.)

lar to the side of the model boat that you placed before him.

Q. (By Mr. Callaway): But he scraped you, the Marsha Ann scraped you, starting about here back to amidship, did it not?

Mr. Shallenberger: Let the record indicate where he started.

A. No, he didn't. I figured he was going to hit me there, but it missed us. It didn't touch us until it plowed into us.

The Court: The question referred to scraping from a portion on the side of the boat immediately below the green light to back about amidship.

A. No, it didn't do anything but hit us there.

Mr. Callaway: All right.

A. That is why I figured that if he hit me at the green light and he hit us amidship, it couldn't have been over two or three seconds, because it is only 14 or 15 feet.

Mr. Fall: May I have that last answer read, please?

Mr. Callaway: That was a voluntary statement. There was no question pending when he was doing the last part of the conversation. [150]

Mr. Fall: Well, may I have the question and the answer that the reporter has?

Mr. Callaway: Sure, certainly.

(Record read by the reporter.)

The Court: I think that he said he figured he was going to hit us at the green light, and then he hit us—he didn't say where—14 feet back.

(Testimony of Martin Miskulian.)

Q. (By Mr. Callaway): Now, did you continue to watch the Marsha Ann from the time you first sighted her up to the point of impact?

A. It was so fast, when I saw her she hit us, and I figured how was she going to hit us.

Q. Well, my question was: Did you continue to have the Marsha Ann under your observation?

A. Yes. Yes, I did. I was watching where she was going to hit us.

Q. And did you give any whistle signal when you first saw the Marsha Ann?

A. I didn't have time.

Q. It is not your testimony, is it, that the Bear did not veer to port or starboard, but that you were watching the Marsha Ann and don't know whether it did, is that right?

Mr. Fall: If the court please, I do think the question is a bit complex.

The Interpreter: Oh, excuse me. [151]

Mr. Fall: I think it could be simplified considerably.

The Court: Read it, Mr. Reporter.

Mr. Callaway: Maybe the witness can understand it.

(Question read by the reporter.)

The Court: You have got too many "nots" in there. I will sustain an objection.

Mr. Callaway: All right, your Honor.

Q. In the short period of time that elapsed between the time that you saw the Marsha Ann first

(Testimony of Martin Miskulian.)

and the collision you don't know whether your boat veered to port or starboard or not, do you?

A. How shouldn't I know when it hit us and took us along?

Q. I may have asked this question but I don't think I ever got an answer to it. In the three or four minutes that the two boats traveled, the *Marsha Ann* forward and the *Bear* to its side, how far did it travel?

Mr. Fall: Just a minute, please. I object upon the ground that the question is uncertain. He said, "How far did it travel?" Now, there are two boats.

Mr. Callaway: Did they travel, then?

The Court: Well, the question has been asked and answered, counsel.

Mr. Fall: And it has been asked and answered if it refers to the *Bear*, because he went into that in detail on [152] several questions.

The Court: The objection is sustained upon the ground that it has been asked and answered.

Q. (By Mr. Callaway): What signal do you give, Mr. Witness, when you want to warn another boat of approaching danger?

Mr. Fall: The question is uncertain in that it does not relate the circumstances.

The Court: Just a minute.

Mr. Fall: It does not relate to circumstances under which the boat is traveling at the time.

The Court: Objection overruled. This is cross-examination.

(Testimony of Martin Miskulian.)

Mr. Callaway: Go ahead.

The Interpreter: I have forgotten the question.

Mr. Callaway: Read it to her, Mr. Reporter.

(Question read by the reporter.)

A. I give the kind of a signal the skipper tells me to give.

Q. How does he signify to you he wants you to give that particular signal?

A. Well, whatever he tells me after he decides whether it is short or long, that is the signal that I give.

Q. In other words, the only signals that you give are either a short signal or a long signal, is that right? [153]

A. Yes. That is the kind that I was giving, the long ones, and most of the time it is a long one.

Mr. Callaway: That is all.

Redirect Examination

By Mr. Fall:

Q. Mr. Miskulian, when you referred to 14 or 15 feet in answer to counsel's question wherein—this is going to be long. I ought to go back again to the question.

The Court: Is this necessary? I mean I don't want to stop you, counsel, but——

Mr. Fall: I don't know that it would clarify the situation anyway. I will withdraw the question.

Mr. Callaway: I have nothing further.

(Testimony of Martin Miskulian.)

The Court: Ask the witness his full name. I do not think you have it for the record.

A. My full name is Martin Miskulian.

The Court: You may step down.

Mr. Shallenberger: Did you wish to continue your cross-examination of Mr. Milosevich, Mr. Callaway?

Mr. Callaway: Yes.

Mr. Shallenberger: I beg pardon?

Mr. Callaway: Yes.

Mr. Shallenberger: Get Mr. Milosevich. [154]

NICK MILOSEVICH

(Recalled)

Cross-Examination

(Resumed)

By Mr. Callaway:

Q. Nick, how long had you been at the wheel before the accident happened?

A. How long before?

Q. Yes.

A. Oh, about two hours, I should judge.

Q. About two hours. Who did you relieve?

A. George Korgan.

Q. Wasn't this man, Martin Miskulian, at the wheel when you took over?

A. Yes, he was when it was clear weather. We change off once in a while, you know. I always was there.

Q. I know, but I am not asking you about the

(Testimony of Nick Milosevich.)

condition of the weather. I am asking you now, wasn't he the man you relieved, relieved at the wheel? Wasn't he the helmsman at the time you took over?

A. You know how we do. Shall I explain it to you?

Q. No, I am asking.

A. He was at the wheel, yes, at times for a very little while.

Q. All right. When you came up it was already foggy, wasn't it?

A. No, it was still clear. [155]

Q. Still clear? A. Yes.

Q. He was right at your left-hand side, wasn't he? A. He was left side of me, yes.

Q. And he was the one that was handling the wheel? A. Yes.

Q. Now, did he blow that whistle when you told him to or did he blow it when he decided to blow it?

A. No, I told him every time.

Q. You told him five or six times a minute?

A. No, three or four times a minute.

Q. Three or four times a minute you would say "Blow the whistle"?

A. And hold it about four or five seconds. Sometimes he was holding it, you see.

Q. You told him to blow it three or four times a minute and to hold it five or six seconds?

A. Yes. That was when we was in fog.

Q. I understand. Did you blow the whistle in answer to a whistle from some other boat or did

(Testimony of Nick Milosevich.)

you blow it whether you heard any other boat's whistle or not?

A. We did always answer to boat, and if not, we was blowing just the same. That is the rule of the sea, too, in the fog, you have to blow it.

Q. We have already been into the rules of the sea. [156] I am trying to find out what you did.

A. Yes.

Q. Why didn't you tell him to blow the whistle every three or four times a minute once, instead of having to repeat it to him every three or four times a minute?

A. Well, I got that habit, you know, because he is kind of a greenhorn.

Q. You were talking to him practically all the time about the whistle, weren't you?

A. Sure. We was watching about boats. You know, the boats was blowing farther away.

Q. What part of the Marsha Ann did you first see? A. Me?

Q. Yes.

A. I saw her around about 50 feet.

Q. No, not distance. What part of the boat did you first see?

A. I seen the bow and the pilot house, both.

The Court: Read the answer.

(Answer read by the reporter.)

Q. (By Mr. Callaway): You saw them both at the same time? A. Yes, sure.

Q. The pilot house is some 50 feet from the bow, isn't it? [157]

(Testimony of Nick Milosevich.)

A. It is a little bit behind us. You can see a little more far.

Q. The bow is considerably higher than the pilot house, isn't it?

A. The bow is higher than the pilot house, yes.

Q. The bow of the Marsha Ann is about even with the top of the pilot house, isn't it?

A. Yes, sure. She is high.

Q. Is about even with the top of your pilot house? A. Yes, sure. She is higher.

Q. Did you tell the whistle man to blow the whistle?

A. What has he got to blow? She is too late any more.

Q. You had four or five seconds. It didn't take that long to blow the whistle.

A. He was blow like the dickens all the time, so what you going to do about it if it is too late any more when she hits?

Q. I am not talking about when she hit. I am talking about when you first sighted the boat.

A. That is the same old story. We was blowing a couple of times before she hits. That two, or three seconds it was too late to stop it, you see, to stop the Marsha Ann.

Q. What signal did you tell him to give the Marsha Ann when you sighted her?

A. He was very short. [158]

Q. What signal did you tell him to give?

A. Like he used to do always.

(Testimony of Nick Milosevich.)

Q. Just the same short whistles?

A. Sure, when she is close like that.

Q. One whistle?

A. One whistle, then the next one. It was too late to give him any more because she hit us in about 15 or 20 seconds. She was on us.

Q. In 15 or 20 seconds she was on you?

A. Maybe before that time. I didn't have no watch in my hand. I don't know nothing about it, but it was pretty fast.

Q. Nick, what is the signal, if you know, that is required to be given under the International Rules to warn an approaching vessel of danger?

A. Approaching vessel of danger?

Q. Sir?

A. You mean to approaching vessel in danger?

Q. To warn an approaching vessel of danger.

A. Generally, just sometime they blow, I think, about five whistles.

Q. I am not talking about what they sometimes do. I am asking you if you know what the International Rules require you to do?

A. I don't understand that. [159]

Q. You don't know, then, what the International Rules require of you in that regard?

A. That is all I know, about five whistles in the danger, and three whistles for calling somebody or best regards to that vessel, I know.

Q. You were not trying to pay your regards to anybody on that day, were you?

(Testimony of Nick Milosevich.)

A. No, because usually you don't have no time to do anything that day. I don't know your name, but to tell you the truth, anyhow, you don't have no chance to do anything that time.

Q. All right. When you got into Van Camp's and you said you had seven or eight tons of fish still in the hold, could not get them on account of water, you took your boat right from there to dry dock, didn't you?

A. No, we didn't. He took us across the shipyard over to Rados and we unload the net first. Before we start to unload the net Borcich left. He asked me if we need any more help. I said, "No." Before that, again, he couldn't back up part way alongside, you know, to stop the boat.

Q. That is when he was having clutch trouble?

A. Yes, that is all. Maybe he is have, maybe he is not. Maybe he couldn't start the engine that second. He said, "Nick, please back up for me a little bit." I did for him. [160]

Q. I see.

A. Then he left when we alongside the wharf to unload the net, and then we went away late on the evening.

Q. The fish were still in the hold, weren't they?

A. Yes, and lots of water, too.

Q. I understand that. But the water drained out when you got on the way, didn't it?

A. Yes, because they make hole in that. They drill holes down in the bottom.

Q. Did you throw the fish away?

(Testimony of Nick Milosevich.)

A. Sure, they did. The shipyard did it.

Q. Why didn't you take them?

A. How am I going to take them? You think I am going to take them on my shoulders? I wouldn't do it. That is too far away to carry it.

Q. Well, the point I make is, you didn't just let them stay on the boat and rot there?

A. You know what happen, that the shipyard take care of the boat. That is their business whatever they want to do with it.

Q. Didn't they sell the fish for you?

A. I don't know. We never got no penny out of it. I know they fill up lots of them 50-gallon drums right there alongside the boat. You can ask Rados, he will tell you the truth. We found out from him lots of the fish went out. [161] They drill hole, I should judge one plank about 12 foot long, so the fish goes out and they wash out, all the fish goes out, because I was there when he did it.

Q. Insofar as whether or not you go out to fish or whether you do not, that is up to the skipper, isn't it? A. That is right.

Q. If you don't want to go out, you don't go out? A. No.

Q. Regardless of the reason?

A. No. You know, sometimes the crew force you to go out, too, you know.

Q. Well, you can get away, can't you?

A. Well, yes, you can do that.

Q. In other words, you can quit any time you want to? A. Yes, that is right.

(Testimony of Nick Milosevich.)

Q. If the skipper does not want to go out to fish and the crew does, then you just don't go, isn't that right? A. Yes, so we stay in.

Q. Had you been on these three nights that you had been out during that season on the boat fishing? A. Yes.

Q. Who were you fishing for then?

A. We was fishing for a fellow by name Tomacich.

Q. You were fishing for fresh fish?

A. And Benn. [162]

Q. They handle fresh fish, isn't that true?

A. No. They was agent for American Canning Co. You know them, all them companies in Wilmington, three or four different canneries around there.

Q. What were you fishing for, mackerel or sardine?

A. No, whatever you can catch. We got, I think, 60-some ton in three nights one after another, so about \$3,600 fish it was.

Q. This was the first trip you had ever made for California Seafood?

A. Yes, that was first one.

Mr. Shallenberger: I beg pardon. Just to keep the record straight you said, "California Seafood." I presume you were referring to "Company," not a seafood fish.

Mr. Callaway: I was. I was referring to the cannery, not to a species of certain fish.

(Testimony of Nick Milosevich.)

Mr. Shallenberger: Very well.

Q. (By Mr. Callaway): Now, aside from you were there any other people on board that had ever fished on that boat before that particular night?

A. I think we had George Korgan.

Q. Well, I know. I am not talking about the owners now. I am talking about the crew.

A. I remember Ancich was with us.

Q. You and Ancich. He was the cook, wasn't he? [163]

A. Yes.

Q. Were the only members of the crew that were on board that had ever been out on that boat before that night, weren't you?

A. I can't recall that.

Q. Now, at that particular time San Pedro Harbor was full of boats. You had these boats down here from San Francisco, Monterey, and some from Washington and Oregon, is that right?

A. There was lots boats in Pedro, yes. That is right.

Q. Yes.

A. Lots of them was working, too.

Q. Lots of them were not even going out at all?

A. I don't know anything about it. We had our chance, I know. I can prove that, too.

Q. And that was because there wasn't any sardines to be found, wasn't it?

A. Shall I explain this to you? We can fish for five-ton, small boats, make two or three hauls. We got 15 or 20 ton on that boat and these big

(Testimony of Nick Milosevich.)

boats, they can't do that. They have to look for little bigger schools, not less than 20 ton or up, and it don't pay for them to go out. We go alongside fish. If we find small school, we get it, for small boats pays more than for big ones. [164]

Q. How does it happen, then, that you did not fish but the three nights in November?

A. Yes, we did. We got fish every night.

Q. But you testified, and so did Mr. Korgan, that you only fished three nights the whole month of November.

A. Three nights, yes, that is the only three nights we fished.

Q. How does it happen you did not go out more often?

A. Wait a minute. I will tell you why. Cannery wants to cut its price on \$45.00 and union wouldn't let the crew go out.

Q. No. That was over—— A. What?

Q. ——in October, wasn't it?

A. No, no. That is the same company. That is cheap company down in Wilmington. It was for \$45.00 and we won't do it.

Q. I know, but that strike was over.

A. The strike was over, but where we get the chance for boat, couldn't we catch under 20-ton limit, couldn't we catch mackerel, Spanish mackerel, sardines, couldn't we? That is why we went out.

Mr. Callaway: That is all. [165]

(Testimony of Nick Milosevich.)

Redirect Examination

By Mr. Shallenberger:

Q. Mr. Milosevich, I believe you testified this morning that you were supposed to be somewhere at five minutes of 12:00. Where did you mean?

A. Five minutes of 12:00?

Q. Yes. You told Mr. Callaway.

A. We supposed to be on lighthouse.

Q. On the lighthouse?

A. Yes, on the jetty at San Pedro entrance.

Q. You also said this morning that it got very foggy 35 or 40 minutes from the jetty?

A. That is correct.

Q. Will you indicate on this chart, Respondents' Exhibit J, what you meant by the jetty when you said 35 or 40 minutes to the jetty.

A. That end. We was right here, going 295 degrees to this jetty here, see.

Q. Yes.

A. This is the jetty. We was going straight for this light, for home, because we hit it. You see, we slowed down. We was going very slow, about two-one-stop, kick in, stop, kick again. We had lots of whistles around the entrance there, maybe 30 to 40 boats there, maybe more.

Q. By "stop" when you were slowed down, when you were [166] stopping and kicking it ahead, etc., is that the stop which you meant when you said 35 or 40 minutes? A. Yes.

Q. From the jetty?

(Testimony of Nick Milosevich.)

A. No. We was going more ahead all the time. We was from the jetty about two and a half miles approximately, not quite three miles to the jetty. But I can recall that easy, because by that time 11:30, it takes about 20 more minutes to get there. We be there pretty near noon. I know exactly where we were holding course for her.

Q. How far——

The Court: Wait just a moment, please.

Mr. Callaway: Just a minute. Will you read the answer?

(Answer read by the reporter.)

Q. (By Mr. Shallenberger): When you picked out a point there and said that it was 35 or 40 minutes from that position to the jetty did you mean in clear weather or foggy weather?

A. That was in foggy weather where we was there.

Q. And the dense fog that you were talking about when the Marsha Ann hit you?

A. Yes. We hit the fog around here some place like and we got right here. I ain't got no ruler here where I can show you.

Mr. Callaway: The witness indicates, first, we hit fog around here some place about opposite Seal Beach. [167]

A. Seal Beach was all full of fog. I know that is true. Borcich can tell you that, too. He was in fog, too. Borcich was in fog.

(Testimony of Nick Milosevich.)

Mr. Callaway: Well, we won't argue about that now.

Mr. Shallenberger: I have no more questions.

Mr. Callaway: Nothing further.

The Court: You may step down.

The Witness: All right.

The Court: Yes, you may step down. Thank you.

Mr. Fall: Libelants will call Mr. Svorinich, Peter.

PETER SVORINICH

one of the cross libelants herein, called as a witness on behalf of libelants and cross libelants, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Peter Svorinich.

Direct Examination

By Mr. Fall:

Q. Do you spell that S-v-o-r-i-n-i-c-h?

A. Exactly, sir.

Q. Mr. Svorinich, were you a member of the crew of the Bear at the time of the collision with the Marsha Ann?

A. Yes, sir.

Q. And you were employed on the vessel as what?

A. I beg pardon? [168]

Q. What were you employed on the vessel—as a fisherman?

A. Yes.

Q. And just before the accident occurred where were you on the boat?

(Testimony of Peter Svorinich.)

A. I was on the stern, on the nets. I was patching nets.

Q. Were you on the port side or the starboard side? A. On the port side.

Q. Pardon? A. On the port side.

Q. On the port side. Did you see the Marsha Ann at any time before the collision?

A. No, sir.

Q. Immediately after the collision what happen to the Bear?

A. When the Marsha Ann hit the Bear the Bear immediately did listing, you know, and I jump on the deck. Of course, I was excited. Really, I don't know what was.

Q. What happened to the Bear?

A. What is happen on the Bear?

Q. Yes. A. Leaking. She started leaking.

Q. Did the Bear continue to go ahead?

A. No. I can't remember that, sir. [169]

Q. Did the Bear list from one side to the other?

A. He listing, absolutely, listing on the port side.

Q. Well, did you see the Marsha Ann after the collision?

A. I see the Marsha Ann was alongside with the bow up against the Bear. That is all what I can see.

Q. On what side was the Marsha Ann? I am referring on what side of the Bear was the Marsha Ann?

(Testimony of Peter Svorinich.)

A. Marsha Ann was on the right side of the Bear.

Q. And was it at right angles or at some other angle?

A. No. It was, I believe—I was really excited, because, really, I was scared stiff. So I see the Marsha Ann was up like this against the Bear. That is all I know because I was excited.

The Court: The witness demonstrating with one palm perpendicular to the palm of the other hand is what he saw after the collision.

Q. (By Mr. Fall): Did you obtain any other employment? A. I beg pardon?

Q. Did you obtain any other employment?

A. Did I go looking for job, is that what you mean?

Q. You wait until I finish the question. Did you get a job at any time between November 30th and February 15th of the following year, and that will be February 15th of this year? [170]

A. No, sir.

Q. Did you try to look for a job?

A. Absolutely, I looking all over to get a boat.

Q. Speak up a little louder.

A. I says I was always looking for a job during this season to get some other boats, all I was looking for.

Q. Keep your voice up so we can all hear.

A. I was always looking during that time, you know. I was looking for job.

(Testimony of Peter Svorinich.)

Q. Did you try to get any jobs fishing for sardines? A. Yes.

Q. What did you do with reference to trying to get a job fishing for sardines?

A. I was looking at so many boats, you know, looking for skippers I know around there.

Q. What did you do with trying to get a job?

A. I went on dock, down below, talk with the crew, talk with the skipper. I know the people, you know, and ask if any chance to get on there and they say "no."

Q. How many skippers did you talk with?

A. Oh, I know lots of them. I know lots of them. I don't know. I can't remember. I know the Long Island. I ask the New Republican. I ask him on the Sea Spray. I forget what you call him, the name—Lobo. I ask Lobo, Alec Lobo. I ask so many I don't know. I forgot. [171]

Q. How long have you fished for sardines in California waters? A. Oh, since 1938.

Q. Have you fished every year since 1938?

A. No, sir. No, sir.

Q. How many years since 1938 have you fished for sardines?

A. Fished in 1938 and 1939, February, then I quit.

Q. All right. When did you start in fishing again? A. 1945.

Q. And did you fish sardines each year from 1945 up until the present time?

(Testimony of Peter Svorinich.)

A. That is right.

Mr. Fall: You may cross-examine.

The Witness: I beg pardon?

Mr. Fall: I was talking to counsel here.

The Court: Just a minute.

Mr. Fall: You stay right there. Counsel will want to ask you some questions.

Cross-Examination

By Mr. Callaway:

Q. You say at the time this happened you were mending nets? A. Yes, sir, I patching them.

Q. Were these nets that are shown on Respondents' [172] F hanging around on the pilot house like that?

The Court: When, at the time of the collision?

Mr. Callaway: Yes, sir.

A. That is the boat on the dry dock.

Q. What? A. That is a boat in dry dock.

Mr. Callaway: I didn't get the answer.

Mr. Fall: "That is a boat in dry dock."

The Witness: That is a boat in dry dock.

Mr. Callaway: I am asking you if those same nets were on the pilot house?

A. That is old nets. I beg pardon. That is the old nets we have on the pilot house. The pilot house was wood, and the owner-skipper say one time to me—I hollered at him, too, "Please, can you help us?" I said, "Why not"——

Q. No, no. My question is very simple, Mr. Svorinich. Were these nets hanging on the pilot

(Testimony of Peter Svorinich.)

house like this at the time of the collision, or were they put there after the accident?

A. Oh, no, that was after that, after that.

Q. That is all I want to know. Did you board the Marsha Ann right away?

A. I beg pardon?

Q. Did you board the Marsha Ann? Did you get on the Marsha Ann? [173]

A. No. I was on the boat when I holler to skipper of the Marsha Ann. He was double-block. We put the double-block and tie the boat alongside and they take us inside.

Q. Did you stay on while the Bear was being towed in? Did you stay on?

A. Yes, I do. And really I never run to the Marsha Ann. Just I run when we come alongside on the—what do you call it? What do you call that, Van Camp, where we discharging fish.

Q. How long was it after the collision before the two ships were parallel or side by side?

A. No.

Q. How long was it, how much time?

A. I don't know that.

Q. What?

A. I never saw the Marsha Ann going alongside before. They never give us double block to tie.

Q. Do you know what I mean by "time"? How long was it before your ship got alongside the Marsha Ann, that she tied a sling around you, how much time?

A. I don't know. I can't tell you.

(Testimony of Peter Svorinich.)

Q. What?

A. I can't tell you how many minutes or how many quarter of an hour. I don't know because I never look on time. [174]

Q. You saw right away that the Bear was leaking, didn't you? A. Yes.

Q. And you thought if something was not done for her she was going to sink, didn't you?

A. Yes, sure. I was afraid.

Q. So I take it that you got this help from the Marsha Ann as quick as you could get it?

A. Yes.

Q. Is that right?

A. Yes, that is right.

Q. Who moved to the side of who? Which boat moved, or did it drift into position?

A. Oh, I don't know, sir, that.

Q. You don't know?

A. No, sir, I don't.

Mr. Callaway: That is all.

Mr. Fall: No questions.

Mr. Shallenberger: That is all.

The Court: Step down.

Mr. Fall: Let us have Mr. Kaiza, John.

JOHN KAIZA

one of the libelants herein, called as a witness by the libelants, being first sworn, was examined and testified as follows: [175]

The Clerk: What is your name?

The Witness: Kaiza, John.

(Testimony of John Kaiza.)

Direct Examination

By Mr. Fall:

Q. That is K-a-i-z-a? A. Yes, sir.

Q. Mr. Kaiza, were you a member of the crew of the Bear at the time she had the collision with the Marsha Ann? A. Yes, sir.

Q. How long had you been a member of the crew of the Bear?

A. Oh, that was my first night.

Q. That was your first night? A. Yes, sir.

Q. How long have you fished in the waters off of California for sardines? A. Since 1920.

Q. You have fished here every year?

A. I no fish for two years before that. I no fish '27 and '28.

Q. Aside from those years, you fished every year out of San Pedro? A. Yes.

Q. And you fished for sardines?

A. Yes. Pedro and Monterey. I was fishing 1925 in [176] San Diego, and so on.

Q. Where were you on the Bear just before the accident occurred?

A. I was in the top of pilot house on the long box and right close to mast.

Q. Were you on the starboard side or the port side? A. On the starboard side.

Q. How long had you been up there on top of the pilot house?

A. Oh, about close to one hour.

(Testimony of John Kaiza.)

Q. Where was the Marsha Ann the first time you saw it? A. He was more right.

Mr. Fall: May I have that?

A. He was more right.

Q. About how far away was it when you first saw it?

A. Oh, it was very thick fog and I was thinking a steamer come. Was very thick fog and he was very close.

Q. But how many feet away was the Marsha Ann when you first saw it.

A. Oh, about this distance from one corner to other.

Q. About from one corner to the other?

A. Yes. About around 50 to 60 feet from us, something like that.

Q. What portion of the Bear did the Marsha Ann strike? [177] A. What was that?

Mr. Fall: Mr. Reporter, would you read the question?

Mr. Callaway: Of course, that assumes a fact not in evidence.

The Court: Overruled.

Mr. Fall: I will withdraw the question.

Q. Was there a collision?

A. Where he hit us?

Q. Yes. Was there a collision?

A. I don't understand.

The Court: Did the boats come together?

The Witness: When the boats come together he come on the right side.

(Testimony of John Kaiza.)

Q. (By Mr. Fall): What part of the Marsha Ann came together with the Bear?

A. It comes this way. That is what you mean?

Q. That is correct. Now, your left hand is what boat?

A. On the right side.

Q. You say "come this way"?

A. Yes, in the right side.

Q. Just a minute, now.

The Court: Put your hands back there.

Q. (By Mr. Fall): Which is the Bear? Now, which hand? You have two hands.

A. This is the Bear on the pilot house—— [178]

Q. Just a minute. Will you listen to my question? You have two hands there. Which hand are you using to show the Bear?

A. This one.

Q. That is your left hand?

A. Yes, the left hand.

Q. Your right hand is the Marsha Ann?

A. Yes.

Q. Will you show us with your hands how they came together?

A. This way.

Q. That is indicating the left hand?

A. Like this.

The Court: The witness is demonstrating that the Marsha Ann struck the Bear at an angle. About what angle would that be?

Mr. Callaway: It is less than a right angle.

Mr. Fall: 80 degrees?

Mr. Shallenberger: I don't know.

Mr. Fall: Just something a little less than a right angle.

(Testimony of John Kaiza.)

Mr. Callaway: Yes.

Q. (By Mr. Fall): At that time how fast was the Bear proceeding?

A. The Bear was—we just kicking once in a while [179] and stop.

Q. How fast was it going?

A. Oh, maybe a mile, a mile and a quarter, something like that.

Q. Did you have an opportunity to judge how fast the Marsha Ann was going?

A. No. He was going, but I saw the fume. When he was very close to us I saw the fume of the boat from the bow.

Q. You said you said you saw the “fume.” What do you mean?

A. When the boat go through the water, then he push water.

Q. Oh, you mean the foam? A. Foam, yes.

Q. What color was that foam?

A. White, naturally.

Q. Do you know approximately how long it was between the first time you saw the Marsha Ann and the time it hit the starboard side of the Bear?

A. Oh, that was very, very—it couldn't be 10 length. It was quick, quick hit and good-bye, you know. That was very fast.

Q. But are you able to tell us in seconds, approximately, if you can? If you can't, why, tell us.

Mr. Callaway: You mean from the time he first sighted [180] the Marsha Ann up to the point of impact?

(Testimony of John Kaiza.)

Mr. Fall: Until it struck the Bear, yes.

A. Yes, that was in very few seconds, you know, when the boat was move, going four or five or six miles. I don't know about how much speed he made, but he come very close. It was thick fog and that was in very—in maybe a minute, two minutes.

Q. Did you hear any fog horns from the direction that the Marsha Ann came?

Mr. Callaway: Well, that is leading.

A. When the bow was sliding——

Mr. Callaway: Just a minute.

The Court: Objection sustained.

Mr. Fall: Let me finish the question.

Mr. Callaway: Well, I thought you had, but even if you had not, it is still leading and suggestive.

Mr. Fall: I don't think so. I am directing his attention to a specific thing, whether or not in that direction he heard any foghorn.

The Court: Reframe the question. I have sustained the objection.

Mr. Fall: All right.

Q. Did you hear any horns, foghorns from other boats immediately within a minute or so before the collision?

A. Yes. It was on the bow, left side and back of us [181] and to sea, but, to tell you the truth, I no see many of them. I know heard any on the right side.

Q. Within two minutes before the——

The Court: Mr. Fall, if you will be some little

(Testimony of John Kaiza.)

time with this witness—do you want to cross-examine?

Mr. Fall: Yes, your Honor, I will be.

The Court: We agreed to adjourn at 4:00 out of consideration for Mr. Shallenberger's bad health.

Mr. Fall: Yes.

The Court: We will go over until Tuesday morning. What time do you want to start?

Mr. Fall: Whatever time you want.

(Discussion as to probable duration of trial omitted from transcript.)

The Court: We will start at 9:30 Tuesday morning. Maybe we will start back at 1:30 and we might go on until 4:00, 5:00, 6:00 or 7:00. We will get a good day's work in Tuesday. We will have a week-end recess.

(Whereupon, an adjournment was taken until 9:30 o'clock a.m., Tuesday, December 13, 1949.) [182]

Tuesday, December 13, 1949, 9:30 A.M.

The Court: Call the case on trial.

The Clerk: 8960-C, Joseph Ancich, et al. v. D/S "Marsha Ann," et al.

Mr. Shallenberger: Ready.

The Court: Have you gentlemen found any further authorities over the week-end?

Mr. Shallenberger: No.

The Court: Mr. Fall or Mr. Roethke?

Mr. Fall: We didn't find any new ones.

The Court: We have done quite a little work on some of these cases.

First of all, it is clear that the lay arrangement, whereby fisherman participate in the proceeds of a fishing venture, are equivalent to wages.

Secondly, I think it is clear that the master or the owner might sue in behalf of the seamen, for any damage to the boat, any loss in profits in the venture, which in turn the master or the owner would be required to pay over to the seamen. The *Menominee*, 125 Fed. 530, seems to so hold, and other cases.

The question remains as to whether or not the seamen themselves can file a libel for their share of the profits of the fishing venture. In *The Columbia*, Federal case No. [184] 3035, it is a little difficult to tell just what the libel there was. The case is entitled "*The Columbia*" but was an action brought to recover damages for the loss of the seine. Is that it, the seine?

Mr. Roethke: That is right.

The Court: The net, I take it. Then it states exceptions were taken to the report of the Commissioner allowing seamen the libel for their share, one-sixth of the catch, estimated, and were overruled. And whether the seamen were sole libelants or intervening libelants, or what their situation was there, is hard to tell from the case.

Of course, the case in 171 Fed. 2d, where Judge Denman held seamen might maintain their action

independently, the facts in that case showed that both vessels were owned by the same owner, and the judge placed the decision, as I read it, upon the basis that the owner could not sue himself, or a master, as agent of the owner, would be in substance suing himself, so he couldn't bring it directly.

Then there was the case of Walkman, and I believe that should be considered in connection with the problem.

Now, it seems to me that the thing boils down to this problem: Assuming that the owner or the master could have brought a libel and didn't, the first question is, may the seamen maintain the action?

No. 2, if the master should have brought it in the first [185] instance, can it be argued that, by the failure of the master or the owner to bring the proceeding, the seamen therefore became entitled to bring it?

The next question would be, assuming for argument only that the seaman weren't entitled to bring the libel, and that therefore there was really no jurisdiction when the action was commenced, is the intervening libel a good libel, or does it hinge upon an action which has a defective jurisdiction in it? I can't find anything on that. You understand what I am talking about, though?

Mr. Shallenberger: Yes.

Mr. Fall: Yes.

The Court: The same as if they had a cause of action started in which there was no jurisdiction, and an intervening libel is filed which, if originally

filed, unquestionably would have been a good libel, does it fail because the original libel failed?

Finally, since these admiralty cases are to be adjudged on questions of equity and very broad principles are involved, supposing the owner presently filed the new libel in which he sued for the collision and also for the claim of the seamen, and that libel was then consolidated for the purpose of trial with the proceedings thereon, would or would not that cure any problem that might arise? That raises the question of the statute of limitations, I suppose. [186] There has been no petition on limitation filed in this case, has there?

Mr. Callaway: I don't know of any statute of limitation that is applicable.

Mr. Shallenberger: If the court please, I think the court is talking about two things. The petition of limitation would be to limit the value of the vessel. The statute of limitations——

The Court: No, there is another thing I am talking about. I only know what I read in these cases. They tell me that under Rule 36 the law provides that the owner of the vessel might file within six months after the collision a petition to limit not the liability, but to limit the bringing of the action. And if the petition was filed within the six months period——

Mr. Shallenberger: That is in connection with liability. I think the court will find, as it peruses the question, that that limitation is not a limitation upon bringing the action, but is a limitation upon

bringing an action where the ship owner petitions to limit his liability to the value of the ship.

The Court: Maybe you are right. However, as Mr. Callaway says, we may not find any statutes of limitation that are applicable. I think there are some two-year statutes. [187]

Mr. Shallenberger: Two years ordinarily is used as the general period after which courts in this district will declare laches if it is not brought.

The Court: Yes. I ran onto the rule that if the case is stale the court will refuse to entertain it.

Mr. Shallenberger: If the court has any question about the other matter you spoke about, I had occasion to research that quite thoroughly about a year ago and I would be glad to supply the authorities. I don't have them with me this morning, but will be glad to supply them to show that particular limitation is in connection with the owner's petition to limit liability.

The Court: On that last point, namely, would the filing of a new libel by the owner, prepared for himself and for the seamen, consolidated in this action, would that cure any problem that might arise?

Then there might be a final point to think about, and that is—maybe this is the time to see what the courts will say about this. In other words, my present view is to see, if there is any way to do it legally, that these seamen have a right to sue, that these fishermen have a right to sue; but there might well be some appeal on that, and if it is a question

that you can't find authority on, you might get an answer to some of your problems by that sort of proceeding. [188]

That is what I am thinking about.

Mr. Fall: Isn't this the answer to that last point: It is the respondents' contention that there is at least mutual fault. Therefore, if the court would find there was mutual fault, would the owners of the Bear then have been obliged to represent the seamen in a case against the Marsha Ann and itself? That is a point that the court is going to determine, whether or not there is a mutual fault; and why should the owner be placed in the position of handling the rights of the third parties, by either suing or not suing himself?

The Court: In other words, to go a step farther, the owners of the Bear, on that theory, would be in an inconsistent position to a certain extent?

Mr. Fall: A very inconsistent position, because if they elect to sue only the Marsha Ann, and the court would find mutual fault, then the owners of the Marsha Ann would be entitled to recover one-half the liability they might have to pay out to the seamen, from the owners of the Bear. So we need mutual assistance to place the men only in the position of having their owners represent them.

The Court: Well, I just didn't think we would have a long argument this morning, but I wanted to know if you found any new authorities, and I wanted to tell you what I was thinking about. [189]

Has anyone anything else to add?

Mr. Shallenberger: No:

The Court: Let's go ahead.

Mr. Fall: John Kaiza.

JOHN KAIZA

one of the libelants herein, called as a witness by the libelants, having been previously sworn, was examined and testified further as follows:

Mr. Fall: I don't recall how far we did get on the direct. I don't have notes. I will have to ask the judge for assistance on that.

The Court: I will summarize what notes I have.

He was a member of the crew on 11/30/48. It was his first night out with the Bear. He has been a fisherman in Southern California since 1920; was on top of the pilothouse, the starboard side, up there for an hour; thick fog, could see 50 to 60 feet; and then the Bear was traveling a mile per hour to a mile and a quarter an hour, with a kicking in and out.

He saw foam on the front of the Marsha Ann. Can't estimate its speed. Indicated with his hands the direction of impact, which was not exactly at right angles, indicating the Marsha Ann came in a little bit from the front. He stated he saw the Marsha Ann, and "quick hit and goodbye," [190] something like that, a very few seconds, and he said the Marsha Ann was going four, or five, or six miles an hour.

Mr. Shallenberger: With relation to his position, I believe he said he was on the aft end of the pilothouse.

(Testimony of John Kaiza.)

Direct Examination

(Continued)

By Mr. Fall:

Q. Is that correct? Were you on the after end of the roof? A. On the pilothouse.

The Court: Near mast on the starboard side; that is what he said.

The Witness: Near mast. It was on the right side.

Q. (By Mr. Fall): It was on the right side, but it was on the after side also, was it not?

A. Yes, on that side (indicating).

Q. Pardon? A. On the right side.

Q. Listen to my question. The mast was located just aft of the pilothouse, was it not? A. Yes.

Q. And you were on the after side of the pilothouse, as well as the right side?

A. Holding myself on the gear.

Q. Holding yourself on the rigging?

A. On the rigging, yes. [191]

Q. That is the ladders that go on the side up to the mast? A. Yes, that is right.

Q. And with reference to the place that you were standing, where did the Marsha Ann strike the Bear?

A. A little bit—well, two or three feet from them steps.

Q. From the rigging?

A. From the rigging is right.

Q. Two or three feet aft or forward?

(Testimony of John Kaiza.)

A. Aft.

Q. Aft of the rigging. Now, did you hear any blast from a horn, within two minutes before the accident, from the direction the Marsha Ann appeared?

A. No.

Mr. Callaway: I object to that as leading and suggesting the answer. He can ask him what he heard, but I don't think he can direct him to an answer what could obviously be answered "Yes" or "No." It is leading.

The Court: I don't think it suggests either a "Yes" or "No" answer, so therefore it wouldn't be a leading question. Overruled.

Mr. Fall: Will you read the question?

(The record was read.)

Q. (By Mr. Fall): Had Mr. Miskulin been sounding the [192] horn on the Bear prior to the accident?

Mr. Callaway: I object to that as leading and suggestive.

The Court: What does it suggest?

Mr. Callaway: He tells him what Mr. Miskulin is doing, and asks him to give a "Yes" or "No" answer on it. He suggests the fact that he had been sounding a horn.

If the question said, "What was Mr. Miskulin doing," then he doesn't suggest the answer. The witness is then testifying, rather than counsel. In other words, it suggests an answer, what counsel

(Testimony of John Kaiza.)

wants the witness to testify as to what Mr. Miskulin was doing.

Mr. Fall: I don't agree with Mr. Callaway that the question asks for a "Yes" or "No" answer. It isn't suggestive in any way.

The Court: It can be framed so nobody objects.

Mr. Fall: All right.

The Court: I have been through all this. For instance, one of the things you can do is say to the witness, directing your attention to a certain thing, then ask a question. Certainly a question directing his attention to a matter is not a leading question.

Mr. Fall: I will rephrase the question.

Q. (By Mr. Fall): Where was Mr. Miskulin just before the accident happened? [193]

A. Hold that whistle blow.

Q. What was he doing? A. Blowing it.

Q. Blowing the horn or whistle on the Bear?

A. Yes, blowing horn.

Q. All right. Did you obtain any employment, any work for which you received pay, between the 30th day of November, 1948, and the middle of February of 1949? A. No.

Q. Did you look for it?

A. I was looking for it, but——

Q. What did you do in looking for work?

A. I was in the water wharf one place to other, one work to other; but you people not realize how hard it is to find work when you lose one.

Mr. Fall: You may cross-examine.

(Testimony of John Kaiza.)

Cross-Examination

By Mr. Callaway:

Q. Did you, at any previous time, ever pilot a boat such as the Bear?

A. Well, once for short time.

Q. I am not talking about, Mr. Kaiza, on this particular voyage. I mean are you familiar with the operation of boats the size of the Bear? Can you be a helmsman? Can you steer it, run it? [194]

A. Sure, I steer boats.

Q. And you say on this particular voyage you were at the wheel of the Bear, running it, for a time?

A. Yes, I was, just that one night. That was first my night on that boat.

Q. Now, going at one to one and a quarter miles per hour, you can stop that boat, by reversing your engines, practically immediately, can you not?

Mr. Shallenberger: Just a moment.

Mr. Fall: Just a minute. I object, as asking for a conclusion, and not proper foundation laid; certainly not proper cross-examination.

Mr. Shallenberger: Beyond the scope of the direct.

The Court: Well, I don't know that this man has qualified himself to be anything but a fisherman.

Mr. Callaway: Well, if the court feels that I should, I will show his knowledge further.

Mr. Fall: That isn't within the scope of the direct. On the direct of this witness I certainly

(Testimony of John Kaiza.)

didn't show that he had navigated the boat, or any——

The Court: I don't have any notes that you asked him that. Was this the man that took the wheel a short time?

Mr. Shallenberger: No, that was Mr. Milosevich.

The Court: Did you take the wheel of the Bear that night, at the helm? [195]

The Witness: Yes, at the steering, relieving, me and Miskulin.

The Court: For how long?

The Witness: Oh, for a short time, 40 or 50 minutes.

The Court: Well, we are trying this without a jury. The objection is overruled. Cross-examine and see what you can find out.

Read the question that was objected to.

(The question was read by the reporter.)

Mr. Fall: If you know.

The Witness: I don't know if you can——

Q. (By Mr. Callaway): What is that?

A. I don't know if you can stop so quick. I don't know.

Q. Tell me, you have been piloting boats like this many years, haven't you?

A. You see, when we enter in the port, the skipper of the boat maneuver the boat.

Q. Now, in how many feet do you think you could have stopped the boat, at one to one and one-fourth miles an hour?

A. Oh, if boat not go very fast, I think in about

(Testimony of John Kaiza.)

50, 60 feet, if the men back up full speed. But if the men go headway, it take a longer time.

Q. How long had it been that Mr. Milosevich had been at the wheel before the collision? [196]

A. Beg pardon.

Q. Well, as I understand it, Mr. Milosevich relieved Mr. Miskulin?

A. Yes. We call him when the fog start.

Q. Well, how long had he been at the wheel?

A. Oh, maybe 40, 50 minutes. When the fog start.

Q. Now, was there anybody in the crow's-nest up here (indicating)? A. No.

Q. You had a crow's-nest on the boat?

A. No on that boat.

Q. You didn't have any? A. No was that.

Q. What? A. No.

Q. No crow's-nest? A. No.

Q. How did you look for fish?

Mr. Fall: To which we object, incompetent, irrelevant and immaterial to any issue before the court.

The Court: Objection overruled. Go ahead.

Mr. Callaway: You may answer.

The Court: Read the question, Miss Reporter.

(The question was read by the reporter.)

The Witness: If we not have that top there, we look from [197] the bow, one mens in the bow, one mens at the boatside, and everything looks for fish all the time no matter where he is.

(Testimony of John Kaiza.)

Q. (By Mr. Callaway): Now, what part of the Marsha Ann did you see first?

A. Oh, about 50, 60 feet from us.

Q. What part of the boat?

A. On the right side.

Q. On the starboard side? A. Yes.

The Court: You mean you saw her on the starboard side?

The Witness: Yes, on the right side.

The Court: Which part of her did you see first?

The Witness: We was going like this (indicating), and it goes this way (indicating).

The Court: When you saw the Marsha Ann?

The Witness: Yes.

The Court: What part of her did you see first, the side——

The Witness: The side.

The Court: ——or top, or bow?

The Witness: The side. I see his bow.

Q. (By Mr. Callaway): At that time did you see the foam, the white foam that the bow was making? A. Yes, sir; yes, sir.

Q. I take it, Mr. Kaiza, you couldn't see the whole [198] boat at the same time?

A. No, just the bow.

Q. You had no trouble distinguishing the foam that the bow was kicking up?

A. No. It was very close to us, and two or three guy was in the pilothouse by the skipper.

Q. How long had it been since you had heard

(Testimony of John Kaiza.)

a signal, a whistle signal, from any boat other than your own?

A. Oh, it was quite a bit long time. When the fog started, I think then a boat come in from Santa Monica, and their boat was on the right side.

Q. My question is, how long had it been since you had heard a signal from any boat other than the boat you were on?

A. On the bow first was lot of whistle.

Q. Off your bow, then, you heard numerous whistles? A. Yes.

Q. And how long had it been since you heard the last one before the collision?

A. It was—there was blowing.

Q. Blowing all the time?

A. Yes, blowing whistle, boom, boom, boom, from one side to the other, from the bow. Both was going in the port.

Q. I see. What kind of whistle signal was Mr. Miskulin [199] making?

A. He was answering to the other boats. You got to answer the boats close, "Boom, boom," to each other. That is the way they learn how far they are from each other.

Q. In other words, every time he would hear a whistle he would—— A. He answer.

Q. He would make one such as you have indicated, "Boom, boom, boom," is that right?

A. That is right. He answer it.

Q. Do you mean to indicate now that he made

(Testimony of John Kaiza.)

three short whistles, such as your testimony would indicate?

A. There was blowing to the answer of them other boats.

Q. I understand that.

A. No, I don't know if it is three or four. I know there is 50 or 60 of them.

The Court: What kind of whistle did Mr. Miskulin make? Can you show us here what kind, and how long?

The Witness: When we heard, long distance from us, long whistle, long blast, then we give long blast: When we heard smaller, we give smaller. That means we close to each other.

The Court: Did each of these whistles that Mr. Miskulin gave have one blast, or two blasts, or three, each separate whistle? [200]

The Witness: Like I says, sir, when boats close, then we give just one little shot, and we know each other where we are. But the boat master who give the longer whistle, you know he is gone, and you pull a long one again.

Mr. Callaway: I didn't hear the answer. Will you read it?

(The answer was read by the reporter.)

The Court: Is that the practice, in this fog, to answer the whistle by the same kind of whistle you hear?

Mr. Callaway: No.

Mr. Shallenberger: I think it is possible, among

(Testimony of John Kaiza.)

the fishermen. There is nothing in the rules that they shall.

The Court: There is nothing you gentlemen can agree to on that?

Mr. Callaway: I agree that we have already agreed on the stipulation which we prepared and filed with you, that the International Rules apply and the signals required under those rules.

The Court: I am inquiring on this one thing. If there is no agreement on it, we will pass it. I was just wondering whether there was a practice.

In other words, if you hear a bunch of foghorns around you in a fog, and hear a fellow off in the distance give you a long blast, do you answer about the same size of blast so he knows you heard him? And if you hear a short one, you [201] reply with a short one?

Mr. Callaway: I am not familiar with any such custom.

The Court: Let's go ahead.

Q. (By Mr. Callaway): Now, when these boats came together after the collision did they separate?

A. When he hit us,——

Q. Bounce off?

A. When he hit us, then he push three minutes, three to four minutes, toward boat. He push this way (indicating).

The Court: The witness is indicating that after the collision the impact of the Marsha Ann pushed the Bear sideways.

(Testimony of John Kaiza.)

Mr. Shallenberger: From starboard to port.

The Court: From starboard to port.

Q. (By Mr. Callaway): For how long?

A. Three to four minutes.

Q. What were you doing in that three to four-minute interval?

A. I was watching for myself, to save myself.

Q. Did you get aboard the *Marsha Ann*?

A. Yes. After the boats was pushing, then they came on together like this, you see (indicating); and then the tide took both boats.

Q. Now, do you mean, Mr. Kaiza, that the boats occupied a position almost at right angles to where the *Bear* was going [202] propelled sideways in the water and the *Marsha Ann* straight ahead, for three or four minutes, or do you mean they were at one time in that position but in three or four minutes they were side by side?

A. That is the way they were, sir, when they hit——

Q. Do you understand my question? I don't want to confuse you. Do you understand my question?

A. What I see is what I know. When he hit us we was go that way, then in that period of the time the boat came this way (indicating).

The Court: The witness has indicated with his hands that at the end of the sideward pushing of the *Bear*, the two boats ended up side by side, with

(Testimony of John Kaiza.)

the bow of the Marsha Ann back and aft of the bow of the Bear.

Q. (By Mr. Callaway): My question is, did all that take three or four minutes, or was it three or four minutes that you were traveling, you might say, sideways? Do you understand my question?

A. You say how——

Q. No. Think just a little.

A. He was push and swinging along, and the boats come in this way (indicating), both together. That is all I can answer.

Q. My question is very simple. Listen——

The Court: Read the question. [203]

(The question was read by the reporter.)

The Witness: I understand now what the gentleman means. It was taking that much time. Then when the boats swing over together, it was taking more time, when we tied up line, and one thing and another. That is all I see.

Q. (By Mr. Callaway): I still don't understand what you were doing at the end of the three or four-minute period.

A. I was just watching.

Q. I know you were just watching.

A. I was watching at the top. I was at the top, and I was scared to go down on the deck. That is all what I was doing. I was scared to go on the upper deck.

Q. Well, I will try again, Mr. Kaiza. Did it take three or four minutes for your boat to travel sideways and the Marsha Ann straight ahead, and then

(Testimony of John Kaiza.)

come around where they were together, the bow of the Bear being ahead of the Marsha Ann, or did it take—— A. We——

Q. Wait, let me finish. ——or were you traveling sideways during that entire three or four-minute period?

A. Three or four minutes we was going this way (indicating).

Q. You mean sideways? A. Sideways.

Q. That is all I want. [204]

A. Then a longer time before we came alongside of each other.

Q. I see. How long were you there before you commenced traveling to San Pedro?

A. I couldn't tell you that exactly.

Q. Did you get aboard the Marsha Ann?

A. Yes, sir.

Q. When?

A. Oh, when the tide took the boat. When she did, when the tide took the boat over together, then I jumped in my boat and was trying to save my clothes. I was thinking the boat going to sink.

Q. During the period of time after you first sighted the Marsha Ann, how far forward did the Bear travel before the collision?

A. How much we was going?

Q. How many feet did you go forward before the collision?

A. Oh, maybe 10, 15 minute, something like that.

(Testimony of John Kaiza.)

Q. Did the direction in which your bow was headed change any during that time?

A. I don't understand.

Q. Well, did your skipper turn to pull away from the Marsha Ann?

A. I couldn't tell you that, because I was looking on [205] the boat. I couldn't say anything like that, what he was doing, because I was looking on the boat. It was awful danger, in the fog.

Q. Did you stay in relatively the same position——

A. Yes.

Q. ——near the mast?

A. Yes, hold myself one of the gears.

Q. You stood right there?

A. Yes, I stood right there until went to tie up the line.

Q. And you didn't move from one side of the boat to the other?

A. No.

Q. Well, I take it, Mr. Kaiza, that when you first saw the Bear you thought she was going to strike your boat just about where you——

A. No, he was a little bit over the blue light, going a little further from the mast. I was thinking he going to hit about the blue light.

Q. By "the blue light," do you mean the side light?

A. Yes, the side light, that is right.

Q. What did you mean in your direct testimony, Mr. Kaiza, when you said, "It was quick hit and goodbye"?

A. Yes, when he come on us, I said, "Goodbye now, we gone." That is what—— [206]

(Testimony of John Kaiza.)

Q. In other words, you thought it was all over?

A. Yes, that is all. It was danger, to save the life. That is why I said, "Goodbye," to myself.

Mr. Callaway: That is all.

Redirect Examination

By Mr. Fall:

Q. Mr. Kaiza, was there anyone on the bow of the Marsha Ann when you first saw it?

A. No. I show there how I was, and two or three guy was in the pilothouse. No one in the bow.

Q. Did you have any other duties other than a lookout at the time of the collision?

A. No, I no got any duty. I was watching for boats; I got no other duties.

Q. Was that all you had to do?

A. That is all.

Q. Did you ever try to stop the Bear at any time? A. No.

Q. Whether it was at one mile an hour or six or eight miles an hour?

A. No, never tried to stop the Bear. I never stop—that was my first night.

Q. You never did? A. I never did.

Mr. Fall: I have no further questions. [207]

The Court: You may step down.

Mr. Fall: Mr. Ancich.

The Court: Ancich, the cook?

Mr. Fall: Yes.

JOSEPH ANCICH

one of the libelants herein, called as a witness by and on behalf of the libelants, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name?

The Witness: Ancich.

The Clerk: What is your full name?

The Witness: Joe Ancich.

Direct Examination

By Mr. Fall:

Q. Is that Joseph?

A. Well, Joe and Joseph.

Q. Mr. Ancich, were you a member of the crew of the Bear on November 30, 1948?

A. Yes, I did.

Q. And what was your position?

A. I was cook there.

Q. And how long had you been a member of the crew there?

A. I was there about, I think, couple of weeks, I guess, [208] all together.

Q. And do you recall the accident that occurred on the morning of November 30, 1948?

A. That is right.

Q. Where were you on board the Bear at the time of the collision?

A. Well, I was in the pilothouse, the bridge; what we call a pilothouse.

Q. On top?

A. Yes, close to icebox.

(Testimony of Joseph Ancich.)

Q. Did you see the Marsha Ann before the collision?

A. Yes, I did. I just happen to come up and saw it.

Q. You just happened to come up, and saw it?

A. Yes.

Q. And the ladder coming up to the top of the pilothouse, was that on the after side of the pilothouse?

A. That is on the left side.

Q. The port side?

A. I don't know. I call it left side.

Q. How long had you been up on top of the pilothouse before you saw the Marsha Ann?

A. I just come up there, I just come up when it happened; about 20 seconds after it happen.

Q. About how far away was the Marsha Ann at the time you first saw it? [209]

A. Well, when I come up, I look north, and I see Marsha Ann, see. I don't know if I pronounce the right name or not. I saw coming this way,—I don't think they going to back up. I don't know why they don't back up. That is all I see.

Q. About how far from the Bear was the Marsha Ann when you first saw it?

A. That was, I think, about 40 or 50 feet, I think.

Q. Did it change its course at any time between the time you first saw it and the time of the collision?

A. What you mean "they"?

Q. The Marsha Ann.

(Testimony of Joseph Ancich.)

A. No, they come right straight ahead.

Q. And about how fast was the Bear going at the time, if you know?

A. Well, I don't keep much track of it, because I was a cook, you know; but I think that we stand still, see.

Q. So what happened to the Bear immediately after the collision?

A. Well, I went down there, and I see that we was pushing, you see, maybe for about 10 or 15 or 20 seconds, I am not sure, and the Marsha Ann down there, maybe 4 or 5 minutes, I don't know, maybe more, I am not sure. Then I went inside the galley, and that is all I can say.

Q. Do you know whether the running lights or mast lights [210] on the Marsha Ann were burning at the time you first saw it?

A. Well, I see no light.

Q. Did you see anyone on the bow of the Marsha Ann at any time between the time you first saw it and the time of the collision?

A. You mean if I see anybody on the Marsha Ann?

Q. On the bow.

A. Any man? Yes, I see the skipper and some other guy on the top of the pilothouse. That is all I saw.

Q. I am talking about the bow.

A. No, I don't see anybody on the bow.

Q. Were you employed at any time between the 30th of November and the 15th day of—

(Testimony of Joseph Ancich.)

A. No, I wasn't.

Q. —February? I am talking about November 30 of 1948 and February 15 of 1949.

A. No. I just was first of July on Cortez Washington.

Q. What did you do with reference to trying to get employment between November 30 of 1948 and February 15 of 1949?

A. I was looking for job Canada C.I.A. workers, but I shipyards and cannery, and I like to go fishing, and try to get a job.

Q. Do you remember Ray Zukowski?

A. You mean that guy that live at Tacoma?

Q. Yes. A. Yes, I know him.

Q. Did he accompany you at any time on these attempts to seek employment?

A. Well, I used to go down to the call at Kello, down to 6. I saw him there every once in a while, a day, and he ask me once couple of dollars. I don't know I give him any money.

Q. Do you know whether or not he was seeking employment?

A. I don't think he was working.

Q. Did you see him try to get a job?

A. Yes, I see him try to get a job. He was down on slip, and on Terminal Island, trying to get a job. I don't think he have job when I saw him.

Mr. Fall: You may cross-examine.

(Testimony of Joseph Ancich.)

Cross-Examination

By Mr. Callaway:

Q. What was the first thing that attracted your attention to the Marsha Ann?

A. I don't understand you.

Q. What was the first thing that attracted your attention to the Marsha Ann?

A. You mean what I saw?

Q. Yes, was there anything that attracted your attention [212] to her?

A. When I was in pilothouse, all I see coming is Marsha Ann, that is all I saw.

Q. What caused you to look in that direction?

A. It happened I look that way, because whistle all over, and we whistle, and there was danger there.

Q. You think it was the whistle signal that you heard that made you look that way?

A. Yes, but it was too fog. There was rest of them whistles all over on the side. And we whistle steady. That is all I know. When I was in the galley I——

Q. I am not talking about while you were inside; I am talking about after you got on top of the pilothouse.

A. I know we are whistling, that is all I heard; and I heard a few whistle answers, way too far.

Q. What caused you to look up when you saw the Marsha Ann?

A. It just happened I came up from the pilot-

(Testimony of Joseph Ancich.)

house to get some tomatoes, and happened to see, that is all.

Q. Did you hear anybody on your ship say anything to the skipper or the helmsman about the presence of a boat approaching off your starboard?

A. I never heard anything.

Q. In other words, you didn't hear any of your men say, "Look out, here comes a boat," or anything like that?

A. No. [213]

Q. What?

A. No.

Q. How long was it, Mr. Ancich, between the time that you first sighted the Marsha Ann and the actual impact? Do you understand my question?

A. Well, one way I understand, an another one——

Q. I will reframe it. From the time that you first saw the Marsha Ann——

A. Yes.

Q. ——off to your starboard, right up to the time that the two boats hit, how long was it?

A. Oh, that was about 20 seconds, I guess, 20 or 25 seconds.

Q. During that 20 or 25 seconds, did you hear any of the people on your boat say anything to the skipper or the helmsman about the approach of the Marsha Ann?

He shook his head.

A. Just "Stand by there," is all.

Q. How much distance is there between the bridge of the Bear and the bow of the Bear?

Mr. Fall: What part of the bridge?

(Testimony of Joseph Ancich.)

Q. (By Mr. Callaway): Well, I will put it this way: Where were you standing, by the icebox?

A. I can tell you where I stand.

Q. No, how far was it from where you were standing to [214] the bow of the boat?

A. I was standing on top of the bridge there.

Q. I know you were. How far was it from the bow?

A. About—well, I am not carpenter, but I am sure I think about 20 feet at least. I am not sure, I don't want to say.

Q. I understand you think it was about 20 feet, is that right? A. Yes.

Mr. Fall: Answer audibly. Don't shake your head; the reporter can't get that. What is your answer?

The Witness: Yes.

Q. (By Mr. Callaway): Isn't it true that at the time in question your visibility was limited to about the bow of your ship, by the density of the fog? Do you understand my question?

Mr. Fall: Answer audibly.

The Witness: No.

Q. (By Mr. Callaway): I say, isn't it true that that is about as far as you could see, on account of the density of the fog at that time?

A. Oh, I could see more than that.

Q. How far could you see?

A. It was around 40, 50 feet.

Q. Well, I will ask you this question: After these [215] two boats had had the collision and

(Testimony of Joseph Ancich.)

finally came around into a parallel position, did you see another boat go by the Marsha Ann——

A. I don't see no kind of boat.

Q. ——on the starboard side?

A. I don't see no kind of boat. It happen, I went inside the galley; that is all I know.

Q. This is after the collision was all over; did you see a boat pass within 25 feet?

A. No, no, I don't see no boat.

Q. Now, could you see the bow of the Marsha Ann before you saw the pilothouse, or at the same time, or what?

A. Well, I don't look in the pilothouse. I look this way (indicating), when I look out.

Q. Well, the Marsha Ann is coming directly toward you, isn't it?

A. Come this way (indicating).

Q. Right directly at you? A. Yes.

Q. Did you see the bow and the pilothouse at the same time? A. Ours?

Q. No, the Marsha Ann.

A. Yes, I saw captain and another fellow, on the pilothouse. [216]

Q. When you first saw the Marsha Ann?

A. Yes, the captain and another man.

Q. You saw the captain and another man?

A. Yes, through the fog.

Mr. Callaway: That is all.

Mr. Fall: I have no further questions.

(Witness excused.)

Mr. Roethke: I call Mr. Bogdanovich.

ANTON BOGDANOVICH

called as a witness by and on behalf of the intervening libellants, having been first duly sworn, was examined and testified as follows:

The Clerk: The first name is A-n-t-o-n?

The Witness: A-n-t-o-n, yes.

Direct Examination

By Mr. Roethke:

Q. Mr. Bogdanovich, how do you make your living? A. Fishing.

Q. How long have you been a fisherman?

A. Well, I started first on this port since 1927; that is, this port, Los Angeles port.

Q. How long have you been a fisherman?

A. Ever since I came in this country in 1912.

Q. Now, were you ever employed aboard the fishing boat [217] the Bear?

A. No, just that was my first night out.

Q. I say were you ever employed on it?

A. No.

Q. You never worked on the Bear at all?

A. No, just that night when I went out first.

Q. Mr. Bogdanovich, will you pay attention to the question? A. Yes.

Q. When did you start working on the Bear?

A. I start working on the Bear maybe a day before we went out.

Q. That would be the 28th or 29th of November, 1948? A. Just about that.

(Testimony of Anton Bogdanovich.)

Q. And you were a member of the crew, were you, of the Bear on the 30th of November, 1948?

A. Yes, sir.

Q. Had you gone out fishing the night before, on the Bear?

A. Yes, sir.

Q. Now, on the morning of the 30th, about 9:30, where was the Bear, if you remember?

A. I don't remember where was the Bear, because I was—I think I must be sleeping, because I wasn't on deck at all. [218]

Q. When did you come on deck on the morning of the 30th, Mr. Bogdanovich?

A. Well, I come on deck around about, it must be around about quarter to eleven.

Q. About a quarter to eleven. Where was the Bear at that time, Mr. Bogdanovich?

A. Well, the Bear must be at that time around some place past Newport, around there, Huntington Beach, whatever they call it.

Q. Was it foggy at the time you came topside?

A. When I went topside, it was pretty foggy, yes.

Q. I see. Did you have any duties on the Bear that morning?

A. No.

Q. Did you come topside to do anything?

A. I came up there to my duty, to help look out.

Q. Well, did you have duties, then, as a lookout?

A. Part of it was my own will to go up there on a lookout.

Q. Well, where do you go to look, in a lookout?

(Testimony of Anton Bogdanovich.)

A. I was standing there right under the green light, standing right on the rail.

Q. Does this look something like the Bear looks, Mr. Bogdanovich? A. Yes. [219]

Q. Now, using this as a model, will you show the court where you were standing on the Bear on the morning of the collision?

A. Yes, I was standing right about here (indicating).

The Court: Indicating the topside, where the pilothouse is on the model, and to the right of the front end of the platform.

Q. (By Mr. Roethke): Let me ask you, was the Bear in a collision with another vessel on the morning of the 30th, Mr. Bogdanovich?

A. What do you mean "collision"?

Q. Well, did you have a collision with another boat on that morning?

A. I don't understand that word "collision."

Q. Well, did the Bear——

The Court: An accident.

The Witness: No.

Q. (By Mr. Roethke): You had no accident that morning? A. No.

The Court: Did somebody else have an accident?

The Witness: I guess so.

The Court: Did the Bear collide with, or did any other vessel collide with, hit the Bear that morning?

The Witness: The Marsha Ann hit it.

Q. (By Mr. Roethke): Do you know what time

(Testimony of Anton Bogdanovich.)

the Marsha [220] Ann hit the Bear, Mr. Bogdanovich?

A. I should judge it was around about 11:30, something like that.

Q. Had you been standing on the bridge of the Bear, then, for about 45 minutes before the collision with the Marsha Ann? A. Yes, sir.

Q. And during the time you were standing there, what were you doing, Mr. Bogdanovich?

A. When I was standing on top the bridge?

Q. Yes.

A. I just sat there and watched, and when I hear some whistle I report to Mr. Milosevich the direction.

Q. Which way were you looking?

A. I was looking forward. The position I could see both sides and ahead.

Q. You mean to starboard and ahead?

A. Yes.

Q. Mr. Bogdanovich, where was the Marsha Ann when you first saw it?

A. Well, the Marsha Ann, when I first saw her, she was just about 50 feet away from us, 40 to 50 feet, I should judge, that way (indicating).

Q. And which side of the Bear?

A. On the right side. [221]

Q. And what was her heading? What was the Marsha Ann's heading at that time?

A. She was heading right ahead, right toward us when I saw her. She was heading for fishing ground, I guess.

(Testimony of Anton Bogdanovich.)

Q. What part of the Bear was she heading for?

A. The way I was looking, she was going to hit us around the green light, when I saw her.

Q. Where did the Marsha Ann strike the Bear?

A. The Marsha Ann struck about here (indicating).

The Court: Indicating immediately aft of the center.

Q. (By Mr. Roethke): About how far back of the green light would that be?

A. That must be at least 10 feet, 7 or 8 feet, something like that.

Q. Now, when you first saw the Marsha Ann, was there anyone on the bow of the Marsha Ann?

A. No.

Q. Between the time you first saw her and the time that she hit you, did you see anyone come on the bow of the Marsha Ann?

A. No. After the collision——

Q. No, I mean before. A. Before, no.

Q. Did you observe the angle at which the Marsha Ann struck the Bear, Mr. Bogdanovich? [222]

A. Well, she struck us right straight broadside.

Q. And after she struck you, what happened to the two vessels?

A. Well, after she struck us, she was pushing the Bear straight broadside.

Q. Were you able to form any estimate of the period of time that the Marsha Ann pushed the Bear broadside?

(Testimony of Anton Bogdanovich.)

A. Well, I would judge at least about four minutes.

Q. Four minutes. After you first sighted the Marsha Ann and to the time of the collision, were you able to form any estimate of the amount of time that elapsed? In other words, how long was it from the time you first saw the Marsha Ann until she struck you?

A. It was only about two seconds.

Q. Were you able to form any estimate of the speed of the Marsha Ann?

A. Oh, yes. I should judge she must travel about six miles anyway.

Q. Did you observe any bow wake on the Marsha Ann?

A. Yes. When she shoving water ahead, you know, the foam of water.

Q. Could you see that on the Marsha Ann's bow?

A. Yes.

Q. What was its color?

A. White. [224]

Q. Did you continue to observe the Marsha Ann from the time you first saw her until the time she struck the Bear?

A. Yes.

Q. Did you notice any change in the Marsha Ann's course?

A. No.

Q. From the time you first saw the Marsha Ann until the time of the collision, did you hear her give any whistle signals, Mr. Bogdanovich?

A. No, I didn't.

Q. Prior to the time the Marsha Ann hit you,

(Testimony of Anton Bogdanovich.)

how long was it before then that you had last heard a whistle signal from your starboard bow?

A. Well, I heard whistles from other boats.

Q. Well, how long was it before the collision that you last heard a whistle signal from the starboard bow of the Bear?

A. Well, the boats, they was blowing steady.

Q. Well, did you hear any whistle signals off the starboard bow of the Bear?

A. No; I heard them on the left side.

Q. Now, was the Bear making any way through the water at the time of the collision?

A. No, we practically stand still.

Q. Practically; were you making any way [224] at all?

A. I should judge, when I say practically stand still, about one mile an hour at most.

Q. When you saw the Marsha Ann coming toward the Bear, did you make any outcry or notify the man at the wheel, of her approach?

A. Well, everybody see it, see her. She is right on top of us. There is not much left to say.

Q. Who had the wheel? A. Milosevich.

Q. Now, did you notice that he observed her as soon as you did, that he observed the Marsha Ann as soon as you had? A. Yes.

Q. During the 45-minute period that you were acting as lookout just preceding the collision, Mr. Bogdanovich, did you have any other duties on the bridge to perform? A. No.

Q. I believe you said that after the collision you

(Testimony of Anton Bogdanovich.)

estimated that the Marsha Ann pushed the Bear sideways for about four minutes? A. Yes, sir.

Q. Was that pushing it toward the port side of the Bear?

A. She was pushing us straight sideways.

Q. Yes, but it would be toward your port side?

A. Yes. [225]

Q. Now, what did you do immediately following the collision, Mr. Bogdanovich?

A. Well, after the, following the collision, I jumped from the bridge down there to see what the damage looks like, then I jump up on Marsha Ann bow.

Q. Well, was the Marsha Ann still pushing against the side of the Bear at the time you jumped?

A. Well, she had the bow up against the Bear.

Q. She had the bow up against the Bear?

A. Yes.

Mr. Callaway: Just a minute, if I may interrupt.

The Court: This is a good time to take our morning recess.

(A short recess was taken.)

Q. (By Mr. Roethke): Mr. Bogdanovich, following the collision, do I understand you to say that you went aboard the Marsha Ann? A. Yes.

Q. Was the Marsha Ann still pushing the Bear sideways at the time you went aboard the Marsha Ann?

A. She had her bow up against our boat anyway.

(Testimony of Anton Bogdanovich.)

Q. Do you recall if she was still pushing you or not? A. No, she was staying against the boat.

Q. Staying against it? [226] A. Yes.

Q. After you got aboard the Marsha Ann, did you have any conversation with Mr. Borcich?

A. I heard Mr. Borcich state that he saw us through the radar.

Q. Did he say anything other than that? Did he say for what period of time he had seen you through the radar?

A. I didn't hear any. That is all I heard, just that he seen us through the radar.

Q. Now, after the collision, what happened to the Bear and the Marsha Ann?

A. After the collision, the Marsha Ann came alongside of the Bear and took us alongside, and put a block and tackle on to lift that side where she was crippled so the water don't go in so much.

Q. After she had done that, what happened?

A. Then she tow us to the port.

Q. Where did she take you?

A. To Van Camp Cannery.

Q. When did you leave the Bear, Mr. Bogdanovich?

A. I leave the Bear that night when we put her in the ways.

Q. Did you ever go back to work on the Bear between the 30th of November, 1948, and the 15th of February, 1949? A. No. [227]

Q. Did you make any attempts to obtain any other employment? A. Yes.

(Testimony of Anton Bogdanovich.)

Q. Between November 30, 1948, and February 15, 1949? A. I did.

Q. What attempts did you make?

A. I went, ask several boats for a chance to go fishing, and they promised me, of course, first chance, but I never got one anyway until I think it was around about February.

Q. When did you next go fishing, Mr. Bogdanovich? A. I went to Mexico, or Tiajuana.

Q. When?

A. Well, we left around, I believe it was around first part of April sometime, about that neighborhood.

Q. Do I understand you did no work at all between November 30th and the early part of April?

A. No.

Mr. Roethke: You may cross-examine.

Cross-Examination

By Mr. Callaway:

Q. You state you were pushed broadside for four minutes. How far did you travel during that four-minute interval?

A. By that you mean the Marsha Ann?

Q. How far did your boat and the Marsha Ann travel during that four-minute interval? [228]

A. Well, I don't know how far she push us, how far she was traveling. She shove us.

Q. How far did she shove you?

A. What is that?

(Testimony of Anton Bogdanovich.)

Q. How far through the water did she shove you?

A. It was pretty fast, because she was laying over with the guy on the water.

Q. But how far, how much distance?

A. I don't know.

Q. You don't have to give it to me in feet. Give it to me in any other convenient measurement, in the boat length of the Marsha Ann, the boat length of the Bear, or anything——

A. She must push us at least, say, about 100 feet.

Q. 100 feet. Now, during that 100 feet, did the bow or stem of the Bear swing in towards the Marsha Ann? A. No.

Q. Just stayed right straight in front?

A. Yes, sir.

Q. Now, if I understand you correctly, when you first saw the Marsha Ann she was headed directly at the light on the starboard side of the pilothouse, like that (indicating)?

A. No, she was going to hit right square into this (indicating).

Q. In other words, it is your testimony that she was [229] at almost a right angle?

A. Yes.

Q. About like I am holding my hand, is that right? A. Yes.

Q. By that I mean at one time it was up here (indicating), but the angle was the same back here (indicating)? Do you understand me?

(Testimony of Anton Bogdanovich.)

A. Yes.

Q. Is that right?

A. Well, she hit us right square.

Q. About like I am holding my hands?

A. Yes.

Mr. Callaway: We will stipulate that is about at right angles.

The Court: The record may so show.

Q. (By Mr. Callaway): Now, during that 20 or 30 seconds that elapsed from the time you first saw the Marsha Ann to the time the boats came together, did your boat turn to the port to get away from it?

A. No.

Q. Just kept going straight ahead?

A. She had her bow straight ahead.

Q. How did you get on the bow of the Marsha Ann?

A. I got hold of a cable and jump up.

Q. Did somebody throw you a line? [230]

A. No.

Q. Did you go right over the stem of the boat?

A. Right over the stem. I jump the guards. The guards below; I put my feet on them and reach up there.

Q. How much higher is the bow of the Marsha Ann than the deck of the Bear, approximately?

A. Well, I don't know. The Marsha Ann was pretty high. The Marsha Ann bow pretty high.

Q. Well, can you stand on the deck of the Bear and reach it with your hands extended as far as you can extend them?

(Testimony of Anton Bogdanovich.)

A. Yes, from the deck of the Bear. I jump on the guard first.

Q. The guard rail of the Bear?

A. No, the Marsha Ann guard, from the Bear.

Q. Well, is it your testimony, Mr. Bogdanovich, that every time you heard a boat whistle you reported it to the helmsman?

A. I reported it to Milosevich.

Q. That is what I mean. A. Yes.

Q. Well, wasn't he standing right beside you?

A. What is that?

Q. Wasn't he right beside you on an open bridge?

A. No, he was about 5 feet away from me. [231]

Q. The bridge was open? A. Yes.

Q. And was he sitting down or standing up?

A. Standing up.

Q. Well, didn't you think that he could hear the same whistles that you heard?

A. I should think that he did.

Q. Well, what was the necessity of your having to tell him every time——

Mr. Fall: I object.

Mr. Callaway: Let me finish my question.

Q. (By Mr. Callaway): What did you think the necessity of telling him was, if you thought that he could hear it?

Mr. Fall: Just a minute; to which I object, on the ground it is argumentative——

The Court: Overruled.

(Testimony of Anton Bogdanovich.)

Mr. Fall: —and asking for a conclusion of the witness.

Mr. Callaway: Read back the question.

(The question was read.)

The Court: Overruled. Just the same, he is asking, "Why did you tell him?"

Mr. Callaway: You may answer.

The Witness: Of course, we do that, sometime he doesn't hear. Maybe I thought he didn't hear the whistles, so I tell him, in cases of that. [232]

Q. (By Mr. Callaway): What prevented him from hearing anything you could hear, with him 5 feet away?

A. I don't know what prevented him. I just asked him, "Did you hear that whistle?" He says, "Yes."

Q. Were any other of the men on the pilothouse reporting to him whistle signals of other boats?

A. I didn't hear no one except just one—what I stated.

Q. Well, you heard a lot of whistle signals in the last 15 minutes before this collision happened, didn't you? A. Yes.

Q. They were coming from all over?

A. No, they were ahead of us.

Q. Ahead of you?

A. Yes, going same direction we was going.

Q. You heard a lot of them?

A. Quite a few of them.

Q. And you told him every time you heard one?

A. Not every time, no.

(Testimony of Anton Bogdanovich.)

Q. How far could you see on this occasion just before the collision?

A. Well, just like I says. I can see around about 50 feet away from our boat, to the collision, is as far as we can see, about 50, 60 feet, something like that.

Q. Had you seen any other boats immediately prior to [233] this happening, say the last 15 minutes?

A. Before that?

Q. Yes, 15 minutes before, had you seen any other boats?

A. We seen one, what we passed close him. We was, on the way, about 15 feet from one boat. I don't know what boat was it. That is the only boat I seen until this happen.

Q. When you saw the Marsha Ann, was that at the same time you saw the pilot and the other fellow in the pilothouse?

A. What is that?

Q. When you saw the Marsha Ann, at the same time did you see the pilot and the other man in the pilothouse?

A. No, I wasn't paying attention. I just seen the pilothouse and bow, and then it is foggy, you know, I think it is big battleship coming.

Q. Were you able to make out the name of the Marsha Ann on the boat?

A. Yes, when she got close.

Q. How close was it when you could distinguish the name of the vessel?

A. Oh, she must be about 10 feet away from us.

Q. Did your vessel change its speed any during

(Testimony of Anton Bogdanovich.)

the 20 to 25 seconds after you saw the Marsha Ann?

A. No.

Q. It stayed the same? [234] A. Yes.

Mr. Roethke: Counsel, may I interrupt there. Did Mr. Bogdanovich say 20 to 25 seconds? I thought on direct he said two seconds.

Mr. Fall: That is correct.

Mr. Callaway: I am wrong; I am reading my notes on Ancich, I beg your pardon. I am reading the wrong notes.

We will withdraw the question and stipulate the answer may go out.

Q. (By Mr. Callaway): Now, when you came on deck about 10:45, it was very foggy then?

A. When I come on the deck? No, it wasn't very foggy.

Q. When did the fog get heavy?

A. Well, the fog, he got pretty thick around about, oh, about 11:00 o'clock, 11:15, something like that.

Q. Around 11:00. And was that when you stationed yourself on the pilothouse?

A. No, I went in the pilothouse a little bit after 10:00—after 11:00.

Q. When you went on the pilothouse, was Mr. Miskulin at the wheel, or was Milosevich?

A. Milosevich was on the wheel.

Q. When you came on deck, who was on the wheel, Miskulin?

A. When I come on the deck, I can't see up to

(Testimony of Anton Bogdanovich.)

the [235] pilothouse; I don't know who was up there on the wheel.

Q. The first thing you did, if I understand it correctly, Mr. Bogdanovich, was that you went down below to see whether or not you were shipping water?

A. Well, I went down to see whereabouts we are shipped, see whereabouts we ship. Then I went back after that and jump on the——

Q. How long was it after the accident before you boarded the *Marsha Ann*?

A. Well, it was just about—it must be around three minutes at least.

Q. At that time, the two boats were at a standstill? A. Yes.

Mr. Callaway: That is all.

Mr. Roethke: We have no further questions of Mr. Bogdanovich.

The Court: Step down; you are excused.

(Witness excused.)

Mr. Shallenberger: I call Mr. Sims. [236]

LOUIS SIMS

called as a witness on behalf of intervening libelants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Louis Sims.

The Clerk: Take the stand.

(Testimony of Louis Sims.)

Direct Examination

By Mr. Shallenberger:

Q. Mr. Sims, what is your occupation?

A. Consulting marine engineer and marine surveyor.

Q. By whom are you employed?

A. P. Banning Young.

Q. And was that your occupation during the month of November, 1948? A. It was.

Q. And how long have you been working in that capacity, Mr. Sims?

A. Since July of 1947.

Q. And do you hold any marine licenses?

A. Yes.

Q. What license?

A. Unlimited chief engineer.

Q. By "unlimited" you mean not restricted to any ocean or any tonnage?

A. That is right. [237]

Q. And do you hold any other licenses other than that, Mr. Sims?

A. That is the top license I hold.

Q. And do you belong to any professional societies? A. No, I don't.

Q. Now, Mr. Sims, were you, on or about the 30th day of November, called upon to make a survey of the fishing vessel Bear? A. I was.

Q. And did you start such a survey upon that date? A. Yes, sir.

(Testimony of Louis Sims.)

Q. And where was the vessel when you first saw her?

A. She was afloat at the dock of the Van Camp Seafood, Terminal Island.

Q. And at that time, Mr. Sims, did you board her? A. I did.

Q. And what did you do at that time?

A. Well, when I first went aboard, I contacted the captain to determine as near as possible the nature of his damage.

Q. And what did you do at that time with respect to determining the nature of the damage?

A. Well, of course, the vessel was afloat, and she had on a partial load of fish; and prior to my arrival the skipper had made arrangements and had pumps provided in order [238] to pump her down. She was making water, and her fish hold was practically filled.

There was also water in her engineroom, as a result of her leaking pretty badly.

Q. Now, Mr. Sims, what did you actually do with respect to determining the extent of damage while the vessel was lying there at the Van Camp dock?

A. Well, there wasn't too much that you could do right at that time. The thing that we had to do was to get her unloaded and get her on the ways, get her out of the water; and naturally we looked at the side of it and made what examination we could from topside, and made the arrangement to have her hauled out as soon as possible.

(Testimony of Louis Sims.)

Q. All right; and was she hauled out shortly thereafter? A. Yes, she was.

Q. All right. When was she hauled out, and where?

A. She was hauled out to Harbor Boat, and I believe it was that same afternoon. I would have to check my records on that.

Q. When did you next see her after you saw her at the Van Camp dock?

A. On the ways at Harbor Boat.

Q. When was that?

A. I believe it was the same afternoon. [239]

Q. And did you at that time commence your detailed survey? A. That is correct.

Q. Did you also cause pictures to be made of the Bear and of the other vessel, the Marsha Ann?

A. I did.

Q. And were those pictures made under your direction and supervision? A. They were.

Q. I show you a group of pictures numbered Libelants' Exhibits Nos. 1 through 12, inclusive, and ask you to look at the first picture, Libelants' Exhibit No. 1. Is that one of the pictures which you caused to be made? A. Yes, sir.

Q. And what is that a picture of?

A. A picture of the damage of the area at the stem of the Marsha Ann.

Q. And I show you Libelants' Exhibit——

I am sorry, your Honor, these are not in order. I thought they were. The exhibit that I showed Mr.

(Testimony of Louis Sims.)

Sims, that he just identified, was Libelants' Exhibit 12, and not Libelants' Exhibit 1.

I will now show you Libelants' Exhibit 1, and ask you if that was one of the pictures that was taken under your direction and supervision, Mr. Sims.

A. Yes, sir.

Q. And will you state what that is a picture of?

A. That is a picture of the damaged area of the guard on the Bear, the starboard main guard.

Q. And from what angle was that picture taken, Mr. Sims?

A. That was taken from the top of the bulwarks, and slightly aft of the damage.

Q. And was it looking down upon the——

A. Yes, looking down.

Q. ——deck and top of the guard rail?

A. That is correct.

Q. I show you Libelants' Exhibit No. 2, Mr. Sims, and ask you to identify that.

A. This is also of the starboard side of the Bear, taken from forward and from the top of the bulwarks, looking down and slightly aft.

Q. And what does that picture show, Mr. Sims?

A. That shows the bulwarks where it has been set in and broken.

Q. And what does this show just below the end of this chain, if anything?

A. In this? Well, it shows another view of the main guard there, where it has been crushed and broken in.

Q. In other words, that is the same main guard

(Testimony of Louis Sims.)

damage [241] as is shown in greater particularity in Libelants' Exhibit No. 1?

A. That is correct.

Q. Showing you Libelants' Exhibit No. 3, will you identify that, Mr. Sims?

A. This is a view of the port side of the vessel, from——

Q. Which vessel?

A. Of the port side of the Bear, showing the extent of the damage to her port side hull planking, and where it had been kicked out by the lower end of the knees in the fish hold.

Q. And that is the port side, I believe you said, of the Bear? A. That is correct.

Q. And at about what position longitudinally on the boat?

A. This is just slightly aft of midship.

Q. I show you Libelants' Exhibit No. 4, Mr. Sims. Will you identify that?

A. This is taken slightly forward of the damaged area, looking at the inside of the starboard bulwarks of the Bear, where the inner clamp of the bulwarks has been broken loose and——

Q. Will you point out the inner clamp?

A. This timber here (indicating). [242]

Q. The lower of the damaged timbers as shown on the picture?

A. Yes, that is correct.

Q. Will you proceed and identify the other timbers?

(Testimony of Louis Sims.)

A. This is the hardwood cap on top of the bulwark, which you can see——

Q. Indicating the middle member shown of the three timbers?

A. No. This is all one timber.

Q. I see.

A. That is one timber that has been split. This was broken, the lower portion of it has been broken down, and evidently when it was struck the cap rail being forced inward, it split out this inner clamp, and the upper portion remained with the spike and cap rails.

Q. The top of the apparent plank——

A. That is the hardwood cap on the top of the bulwarks.

The Court: How big is this point (indicating)? Is that a 2 by 10?

The Witness: If I remember right, that was a 2 by 10, yes, sir.

The Court: It is a close-up view of it, so it looks like it is bigger.

The Witness: That cap was also a 2 by 10.

The Court: The cap? [243]

The Witness: Yes.

The Court: This couldn't be a 2 by 10 if this here (indicating) was. That looks like about a 4 by 6.

Q. (By Mr. Shallenberger): Is there anything in your report, Mr. Sims, that will show the size of those timbers?

(Testimony of Louis Sims.)

A. I may have put it in. Sometimes we do and sometimes we don't.

Mr. Shallenberger: Well, I think it is important, your Honor. I will ask some questions of Mr. Sims to identify this.

Q. (By Mr. Shallenberger): Mr. Sims, upon making your survey over the period of time in which you surveyed this vessel, did you make notes of what you found?

A. That is right.

Q. And did you later transcribe those notes?

A. I did.

Q. And how did you transcribe them?

A. Well, it is customary that——

Q. No, not what is customary. What did you do, Mr. Sims?

A. We transcribed them into a written report.

Q. Was that longhand, or——

A. Yes, sir.

Q. All right; and then what did you do with that?

A. Well, then, when the written report is in its [244] completed form in longhand, it is ready then to be typed into the finished report.

Q. All right, did you do that?

A. The typing?

Q. Or did you have it done?

A. Our secretary at the office does the typing of it.

Q. All right. Now, I show you a document here, which is typewritten, and which bears the date of

(Testimony of Louis Sims.)

February 28, 1949, and ask you to examine that document and tell me what it is, if you know.

A. That is the report that I submitted on the completion of the repairs.

Q. That is the typewritten report made from your longhand report, made from your notes taken at the time? A. That is correct.

Q. And did you check this typewritten report?

A. Yes, sir.

Q. And is that your signature at the end of it?

A. That is.

Q. And that was affixed after you checked the reports? A. That is correct.

Q. Now, then, showing you this report for the purpose of refreshing your memory, is there anything in there which would indicate the size of those beams?

A. No, except this: There is one 2 by 10 Douglas fir [245] on the bulwark, but it doesn't give the size of the cap rail.

The present cap rail was, as I specified here, to be saved and to be reinstalled and used in the final repair.

Mr. Callaway: Excuse me, Mr. Sims. What you are talking about, is it not, is this little rail that runs along here (indicating)?

The Witness: That is correct.

Q. (By Mr. Shallenberger): To the best of your recollection, that cap rail was 2 by 10?

A. If I remember correctly, yes, sir.

Q. Now, then, calling your attention, Mr. Sims,

(Testimony of Louis Sims.)

to the angle of this bulwark and the cap rail, those two timbers seem to be lying in different positions to each other; in other words, the broad surface of one appears to be parallel to the skin of the vessel, and the broad surface of the other seems to be perpendicular; is that correct?

A. That is correct.

Q. Now, then, Mr. Sims, showing you Libelants' Exhibit 5, will you identify that, sir?

A. That is a view taken of the damaged area on the starboard side of the Bear, from an angle slightly above the main guard, and it shows the point of impact where the main guard was set in and crushed.

Q. Showing you Libelants' Exhibit 6, will you identify that, sir? [246]

A. This is another view of the inner bulwarks of the starboard side, and showing the position of the main deck directly inboard of the damage to the guard, and showing the extent of the covering board being crushed and raised also there.

It shows also the stanchions. It isn't too plain, as far as the damage to the stanchion being broken along this covering board line, but you can see it here (indicating).

Also, you can see where this timber is split. In the other photograph we were looking at the forward end of it. The split comes back into it.

Q. In other words, to the extreme end and top of this picture it shows the same split bulwark—

A. Yes, sir, that is right.

(Testimony of Louis Sims.)

Q. —as is shown in Libelants' Exhibit No. 4?

A. Yes, that is correct.

The Court: It looks as if the width of this top rail decreases here. Is there some place along the edge where it becomes smaller?

The Witness: No, sir.

The Court: Is this (indicating) smaller in breadth?

The Witness: No, sir, it is the same width.

Mr. Shallenberger: Here (indicating).

The Witness: Oh, there is another place. This is bolted onto here (indicating). [247]

The Court: What?

The Witness: This piece right from here, you can see where it is notched. This short piece is bolted on.

The Court: It is over here where these are bolted together that it is 10 inches wide?

The Witness: I don't just remember the width of that.

The Court: But this piece here (indicating) is the same as this piece here (indicating).

The Witness: Yes.

The Court: Before this piece was bolted on?

The Witness: Yes, that is correct.

Q. (By Mr. Shallenberger): Showing you Libelants' Exhibit 7, Mr. Sims, can you identify that, please?

A. Well, this is another view of the starboard side of the Bear and the damage, showing the

(Testimony of Louis Sims.)

crushed main guard there, also the bruised hull planking down to the turn of the bilge.

Q. And will you indicate where it shows the bruised hull planking?

A. The bruised planking is this five or six pieces of planking from the water line down to this position where she turns under in the hold of the ship. When we removed those planks we found they had been crushed and broken, also.

Q. Now, then, showing you Libelants' Exhibit No. 8, [248] will you identify that, sir?

A. This is a photograph of the fish hold, taken from the starboard side of the fish hold, looking down into it. It shows the extent of how the deck had been wracked and pushed over by the ends of the plank being out of line. The entire after deck had been set for port and twisted and wracked, and this also shows the portion of the water that was still in the hold.

Q. By "the ends of the plank" what planks were you referring to?

A. These are the main deck planks that extend on aft.

Q. And the ends of the deck planks you are referring to, are these planks we see immediately above the net tonnage carved in the main beam?

A. Yes, that is correct.

Q. Calling your attention to the bottom portion of this picture, are those fish in there?

A. That is right. You can see the water. There is water still in the fish hold up to this point (indi-

(Testimony of Louis Sims.)

cating), and those are dead fish that are floating on top of it.

Q. Calling your attention to Libelants' Exhibit 9, what is that, Mr. Sims?

A. This is a head-on view of the stem of the Marsha Ann, and the area of damage to her.

Q. Calling your attention to the foremost part of the [249] stem, is that an iron bar?

A. That is correct. That shows a 3 by 3 piece of steel that had been fitted as the stem iron. 3 inches by 3 inches.

Q. Showing you Libelants' Exhibit No. 10, will you state what that is?

A. That is a side view taken from the forward starboard side of the Marsha Ann while she was afloat at the time the Bear was brought in and the Marsha Ann was standing by until she went into the yard, and showing a side view of the damage to the stem and the extent that the wood had been crushed.

Q. And when you say "wood had been crushed," what wood are you referring to?

A. Well, that is the wood of the stem, the main timber of the stem, and it was directly back of the bend in the stem iron.

Q. And will you describe that crushing as you observed it?

A. Well, it had evidently been set in, and at the time that it was it had crushed that section of wood, that section of the stem, to the extent that

(Testimony of Louis Sims.)

the paint had been chipped off, from the compression, of the wood.

Q. And do you know of what wood that stem is constructed immediately after the stem iron?

A. That is an ironbark stem. [250]

Q. And what is the consistency of the ironbark with regard to strength or lack of strength?

A. Well, it is a very hard, a very hard wood. It is a wood that gets its name from the hardness of it.

Q. And is it customarily used on the stems of vessels for that reason?

A. That is correct.

Q. Showing you Libelants' Exhibit No. 11, will you identify that, Mr. Sims?

A. That is another photograph taken from the starboard side, closer up, of the stem of the Marsha Ann.

Q. And what does it show?

A. It shows a close view of the damage to her stem iron and stem timber.

Q. Would you say that that is a close-up of much the same as is contained in Libelants' Exhibit 10?

A. Yes, sir.

The Court: On Libelants' Exhibit 11, where would you say the stem iron of the Marsha Ann came in contact with the guard rail of the Bear?

The Witness: What portion of it?

The Court: Yes.

The Witness: Right approximatley in there (indicating), the water line.

(Testimony of Louis Sims.)

The Court: The water line, as is marked by paint? [251]

The Witness: Yes.

The Court: That is supposed to be the water line?

The Witness: That is correct.

The Court: Where the white paint stops?

The Witness: Yes; and this is the bottom paint (indicating).

The Court: Indicating the portion above and below the line between the light and dark, where the stem hit the guard rail of the Bear?

The Witness: Yes, sir.

Q. (By Mr. Shallenberger): I believe we have already identified Libelants' Exhibit 12.

Now, then, going back, Mr. Sims, to Libelants' Exhibit No. 1, will you tell the court of what this guard rail, which shows as being crushed in this picture, is constructed, directing your attention to the material of which it is constructed and the size of that material?

A. This guard rail is a laminated section, and the outer side, this band here, is a steel band that is approximately a quarter of an inch thick, and it is 8 inches in width.

This first timber directly beneath the steel band is a hard wood facing; it was a 2 by 8, and that was ironbark.

The next two sections——

The Court: 2 inches is shown here? [252]

(Testimony of Louis Sims.)

The Witness: Yes, sir. We are looking down at the narrow width.

The Court: All right.

The Witness: The next two pieces are of Douglas fir, the first one being a 2 by 8 and the second a 2 by 10, and was then shaped down to conform to the side of the vessel, making the total there in those three pieces of 6 inches.

Directly beneath that was the sheer strake of the vessel, which was a 2 by 10. All four of those timbers were crushed, as you can see. You see the guard very plainly, and the sheer strake is directly beneath that.

Then on the inner side of the vessel, on the inside of the fish hold, there is a main clamp secured, secured directly beneath the main deck beams, and that was a 4½ by 12, and that also was shattered and broken.

Q. (By Mr. Shallenberger): Now, that clamp and deck beam that you speak of which was shattered and broken is where with relation to the crushed portion shown on this photograph?

A. Well, the main clamp is directly under the main deck, and inboard, just inboard of the frames. It is bolted into the frames, into the deck beams of the vessel, and directly beneath the main deck.

Q. All right; but I mean was the deck beam and clamp that you are speaking about in the portion where it was [253] shattered, was it opposite this crushed portion——

A. Oh, yes.

Q. —or was it before or aft of it?

(Testimony of Louis Sims.)

A. Of course the clamp runs the full length of the vessel, and the damaged area of the clamp was directly inboard of this damage we can see here (indicating).

There are also two deck beams, one about this position (indicating), slightly forward, 12 or 14 inches forward of the extreme set-in area of the main guard. The end of that deck beam was split out and shattered.

Then there was a deck beam directly inboard of the point of impact that was completely shattered and split.

Q. And did you give the size of those deck beams?

A. I don't know whether I did or not. The main clamp was $4\frac{1}{2}$ by 10. The size of the beams was 6 by $7\frac{1}{2}$ inches.

Q. And of what material?

A. Those were Douglas fir also.

Q. Now, then, how long were you employed on this job, Mr. Sims?

A. Well, throughout the entire course of repairs.

Q. And how long was that?

A. Well, it started on November 30th, and the vessel was redelivered to the owners on February 15, 1949.

Q. And, Mr. Sims, how often were you at the shipyard [254] in connection with this job during that period of time?

A. Well, I was there in constant attendance on the thing. I would usually make an inspection of it

(Testimony of Louis Sims.)

in the morning, and occasionally there were times when it was necessary to be back there, sometimes once, sometimes twice, again in the afternoon or in the course of the day, particularly when we were opening the damaged area to determine the full extent of the damage.

Q. Now, then, Mr. Sims, I take it that your testimony is that you were there daily during the time that the vessel was being worked on; is that correct?

A. That is correct, yes, sir.

Q. And sometimes several times a day?

A. That is right.

Q. As occasion demanded?

A. That is right.

The Court: It is 12:00 o'clock, gentlemen.

Is this a proper question to ask—we have no jury here. If it isn't——

Mr. Shallenberger: You can ask it.

The Court: Is this a couple of underwriters who paid off the damage and are now fighting among themselves to see who has to bear the burden?

Mr. Shallenberger: I am willing, if Mr. Callaway is.

Mr. Callaway: Yes. [255]

Mr. Shallenberger: The Bear's damage has been paid for by underwriters represented by Mr. Roethke, and Mr. Callaway represents the Marsha Ann company.

The Court: I assumed that. After all, I know something about the affairs of life, and I assumed you gentlemen had insurance, and in admiralty I

(Testimony of Louis Sims.)

take it, as in the other cases, the law suit proceeds under the name of the assured rather than the name of the carrier.

Mr. Shallenberger: That is correct. And I believe Mr. Roethke—possibly Your Honor doesn't recall—stated at the pretrial hearing he has all the subrogation receipts.

The Court: I do recall some reference to that. All right. Is 1:30 satisfactory?

Mr. Shallenberger: Yes.

Mr. Fall: Yes.

(Whereupon, at 12:00 o'clock noon, December 13, 1949, a recess was taken until 1:30 o'clock p.m. of the same day.) [256]